

**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW JERSEY**

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**ATLAS DATA PRIVACY  
CORPORATION, et al.,**

**CIVIL ACTION:**

**NO. 24-3993**

**v.**

**BLACKBAUD, INC., et al.**

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**ATLAS DATA PRIVACY  
CORPORATION, et al.,**

**CIVIL ACTION:**

**NO. 24-3998**

**v.**

**WHITEPAGES, INC., et al.**

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**ATLAS DATA PRIVACY  
CORPORATION, et al.,**

**CIVIL ACTION:**

**NO. 24-4000**

**v.**

**HIYA, INC., et al.**

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**ATLAS DATA PRIVACY  
CORPORATION, et al.,**

**CIVIL ACTION:**

**NO. 24-4073**

**v.**

**COMMERCIAL REAL ESTATE  
EXCHANGE, INC., et al.**

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**MOTION**

**October 22, 2024**

**Sharon Ricci, Official Court Reporter**  
**Sharon.ricci.usdcnj@gmail.com**  
**267-249-8780**

**Proceedings recorded by mechanical stenography; transcript  
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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4077

CARGO GROUP, INC., et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4095

TWILIO INC., et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4104

6SENSE INSIGHTS, INC.,  
et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4105

LIGHTBOX PARENT, L.P.,  
et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4106

SEARCH QUARRY, LLC, et al.

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2 **ATLAS DATA PRIVACY**  
3 **CORPORATION, et al.,** **CIVIL ACTION:**  
4 **v.** **NO. 24-4107**  
5 **ACXIOM, LLC, et al.**

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6 **ATLAS DATA PRIVACY**  
7 **CORPORATION, et al.,** **CIVIL ACTION:**  
8 **v.** **NO. 24-4110**  
9 **ENFORMION, LLC, et al.,**

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10 **ATLAS DATA PRIVACY**  
11 **CORPORATION, et al.,** **CIVIL ACTION:**  
12 **v.** **NO. 24-4111**  
13 **COSTAR GROUP, INC., et al.,**

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14 **ATLAS DATA PRIVACY**  
15 **CORPORATION, et al.,** **CIVIL ACTION:**  
16 **v.** **NO. 24-4112**  
17 **ORACLE INTERNATIONAL**  
18 **CORPORATION, et al.**

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19 **ATLAS DATA PRIVACY**  
20 **CORPORATION, et al.,** **CIVIL ACTION:**  
21 **v.** **NO. 24-4113**  
22 **RED VIOLET, INC., et al.**

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23 **ATLAS DATA PRIVACY**  
24 **CORPORATION, et al.,** **CIVIL ACTION:**  
25 **v.** **NO. 24-4114**  
**RE/MAX, LLC, et al.**

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4168

EPSILON DATA MANAGEMENT, LLC  
et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4171

PEOPLE DATA LABS, INC.,  
et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4175

CLARITAS, LLC, et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4181

DATA AXLE, INC., et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4182

REMINE INC., et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4184

LUSHA SYSTEMS, INC., et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4217

TELTECH SYSTEMS, INC., et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4227

PEOPLECONNECT, INC., et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4230

CORELOGIC, INC., et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4233

BLACK KNIGHT TECHNOLOGIES,  
LLC, et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4269

THOMSON REUTERS CORPORATION,  
et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4271

CHOREOGRAPH, LLC, et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4288

TRANSUNION, LLC, et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4298

EQUIFAX INC., et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4299

SPOKEO, INC., et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4354

TELNYX, LLC, et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4392

MYHERITAGE, LTD., et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4442

WILAND, INC., et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4447

ATDATA, LLC, et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4571

PRECISELY HOLDINGS, LLC,  
et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4696

OUTSIDE INTERACTIVE, INC.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4770

VALASSIS DIGITAL CORP., et  
al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-4850

THE LIFETIME VALUE CO. LLC,  
et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-5334

FIRST AMERICAN FINANCIAL  
CORPORATION, et al.

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ATLAS DATA PRIVACY  
CORPORATION, et al.,

CIVIL ACTION:

v.

NO. 24-6160

LEXISNEXIS RISK DATA  
MANAGEMENT, LLC, et al.

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Mitchell H. Cohen Building & U.S. Courthouse  
4th & Cooper Streets  
Camden, New Jersey 08101  
October 22, 2024  
Commencing at 9:58 a.m.

B E F O R E:

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UNITED STATES DISTRICT JUDGE

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14 Ryan Rose, Judicial Law Clerk  
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16  
17 (Further appearances of counsel are listed on sign-in sheet,  
18 Attachment 1, to the docket minute entry.)  
19  
20  
21  
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1 (Proceedings held in open court before The  
2 Honorable Harvey Bartle, III, United States District Judge, at  
3 9:58 a.m.)

4 THE COURT: Good morning.

5 RESPONSE: Good morning, Your Honor.

6 THE COURT: You may be seated. The Court is hearing  
7 oral argument this morning on the motion to remand in the  
8 various Atlas cases.

9 Mr. Shaw, are you going to be the lead-off?

10 MR. SHAW: I am, Your Honor. Good morning.

11 THE COURT: Good morning.

12 MR. SHAW: Thank you. Your Honor, Adam Shaw for the  
13 plaintiffs.

14 Your Honor, it's a little bit odd, the burdens here,  
15 because even though we're -- we made the motion to remand --

16 THE COURT: That's true.

17 MR. SHAW: -- they made the removal motion and --

18 THE COURT: You decide who goes first?

19 MR. SHAW: Well, I was going to say if I could just  
20 hit some highlights and then reserve some time to come back and  
21 argue.

22 THE COURT: We're going to be going back and forth,  
23 that's --

24 MR. SHAW: Yeah. So I think just briefly, so as Your  
25 Honor knows, there's 70-some-odd cases that are in this court.

1 THE COURT: Right.

2 MR. SHAW: 40 or so -- it's changed a little bit, but  
3 40 or so are subject to remand.

4 THE COURT: Right.

5 MR. SHAW: So without a doubt, 30 or so are staying  
6 with this court. And we're going to be here before Your Honor  
7 and, frankly, we're pleased about that. And we didn't make  
8 this motion to remand to get out of federal court because we're  
9 going to be here anyway.

10 But as you know, there's some cases, even one of the  
11 cases that's been brought up in these arguments, *Attorneys*  
12 *Trust*, where you can get into this weird situation where the  
13 parties take it all the way to the end and then somebody says,  
14 oh, my God, there wasn't jurisdiction here.

15 THE COURT: That would be a problem.

16 MR. SHAW: That would be a problem. So that's why we  
17 raised it when we did.

18 And also, you know, the allegation in the removal  
19 motion was, in our mind, a fiction, that we did it for those  
20 reasons. So --

21 THE COURT: I'm not offended because you made a motion  
22 to remand.

23 MR. SHAW: Thank you, Your Honor.

24 So just briefly, one aspect of the motion is whether  
25 Atlas's citizenship should be disregarded for purposes of

1 determining diversity. And the basis for that is not really  
2 under 28 U.S.C. 1359, but kind of because that's the statute  
3 that deals with kind of looking past the party to try to figure  
4 out whether there was a collusive assignment or mechanism for  
5 getting into federal court.

6 THE COURT: Right.

7 MR. SHAW: And it's been looked to situations where  
8 people try to avoid federal court. But the essential nature of  
9 it is this is a court of limited jurisdiction. Sometimes  
10 people get into stratagems to try to get here or get out of  
11 here, but the whole idea is, is it a stratagem? Was that the  
12 purpose of the relationship of the parties?

13 So regardless of which case you look at or which  
14 factor that you look at, it's all in service of Your Honor  
15 trying to figure out whether somebody's manipulating --

16 THE COURT: It's a fact-bound inquiry.

17 MR. SHAW: It's a fact-bound inquiry, but I would say  
18 there's no set factors that you should look at. They make a  
19 lot of hay about whether it's a partial assignment or a full  
20 assignment and, frankly, Your Honor, I don't think you have to  
21 go too far down that route because, regardless, that may be in  
22 their minds sufficient, but it's not -- sorry, that may be  
23 necessary, but it's not sufficient. That fact alone, whether  
24 it's partial or full, doesn't mean that it's collusive. You  
25 have to look at all of the facts here.

1           And I think if you do look at all of the facts here,  
2 it will be very clear that this is not a stratagem to try to  
3 avoid federal court. They want to try to point to the *Grassi*  
4 factors named after a *Grassi* case. That's fine if you want to  
5 try to look through those. But, you know, if you go through  
6 those, you'll see this has nothing to do really with the  
7 situation in *Grassi*. I think *Grassi* and the other case they  
8 point to, *Attorneys Trust*, the assignors were part of the case.  
9 The assignors controlled the litigation. The assignors, you  
10 know, had this present stake. The assignors tried to avoid  
11 jurisdiction.

12           It's very clear in those facts of those cases. I  
13 think the parties admitted it in those cases. And if not, you  
14 know, the court kind of sussed it out. And that was kind of  
15 the factual circumstances, and that's just not here. There's  
16 nothing here, you know, that even suggests that -- first of  
17 all, the assignors have no role in this case. Second of all,  
18 the idea that somehow these assignors knew about the  
19 jurisdiction of this court and tried to deal with the  
20 assignment in a way to avoid it, it just makes no sense at all.

21           So that's our high-level statement on that.

22           THE COURT: Well, we have issues involving 1332(a),  
23 correct?

24           MR. SHAW: Correct.

25           THE COURT: Some of the removals were based on that.

1 Others were based on 1332(d), CAFA, and the mass tort  
2 provisions.

3 MR. SHAW: Correct.

4 THE COURT: So with 1332(a), isn't the first step to  
5 determine whether Atlas is a real party in interest so that  
6 it's -- so its citizenship is relevant? That's the first step  
7 under 1332(a).

8 And then you get into the issue of whether an assignee  
9 could be a real party in interest. And assuming that Atlas is  
10 a real party in interest, then you get to the question of  
11 collusion.

12 So it's really a two-step process, isn't it, under  
13 1332(a)?

14 MR. SHAW: Yes, Your Honor. And I apologize, I kind  
15 of skipped that first step because I don't think anybody's  
16 controverting that the assignments took place here. But yes,  
17 that is correct.

18 THE COURT: They do argue, I think, that -- nobody's  
19 arguing that the assignments didn't take place, but it's the  
20 legal effect of whether they're a real party in interest, and I  
21 think maybe that's resolved by the *Sprint* case in the Supreme  
22 Court.

23 So then you get to the question of whether -- even if  
24 somebody is a real party in interest or has standing, the  
25 question is, was the jurisdiction manufactured, be coming here



1 just for that purpose?

2 And so that's what you were addressing, the collusive  
3 aspect of it?

4 MR. SHAW: Yes, Your Honor, exactly. Thank you. It  
5 is those two steps. As I said, I went past the first step.

6 I do believe that the assignments are valid and that,  
7 you know, the Court -- I don't even think the role on a 1332 is  
8 to kind of look behind those to try to figure out, you know,  
9 whether it's valid under state law and kind of the -- the  
10 things. But yes, you do have to make some initial  
11 determination that Atlas is a real party because -- as an  
12 assignment, and then you move on to the next step.

13 THE COURT: Right.

14 MR. SHAW: So then Your Honor mentioned the other part  
15 of this case has to do with is there some other reason that  
16 there's not jurisdiction here. They've proffered CAFA. Under  
17 CAFA, there's really two arguments.

18 One, they say you look to not the plaintiff that's  
19 named in this case, Atlas here, but you look to all of the  
20 assignors that are out there that are parties in interest, so  
21 to speak, and you look --

22 THE COURT: Isn't that the class action aspect you're  
23 talking about?

24 MR. SHAW: No, right now I'm talking about --

25 THE COURT: The mass action?

1 MR. SHAW: The mass action aspect.

2 THE COURT: Okay. Go ahead.

3 MR. SHAW: Under the mass action aspect case of it,  
4 there's a case in the Supreme Court called *Hood*. And the *Hood*  
5 case says very clearly you do not look past the named plaintiff  
6 in the case. The *Hood* case makes it very clear that that's the  
7 way the statute is set up; that you have to read the statute  
8 that way; it makes a distinction between the term "plaintiff"  
9 in one part of the statute and some other terms in the statute;  
10 it makes it clear that even though in that case it was a state  
11 suing on behalf of its citizens, that that was not a  
12 controlling or even significant reason to read the mass action  
13 part of the statute differently.

14 They say you read it for its plain terms, and its  
15 plain terms said "plaintiff," and you look to the plaintiff,  
16 you don't look behind it. They didn't look behind it in the  
17 *Hood* case where there was citizens behind the state, and they  
18 haven't looked behind it in various other cases that we  
19 submitted in our brief. Situations where there's like an  
20 insurance subrogee, situations where there's a corporation  
21 suing on behalf of some kind of security holders, and other  
22 types of situations like that. You look to the plaintiff.

23 So we would say that the *Hood* case is controlling in  
24 that aspect. They say you don't read *Hood* that way and that  
25 you -- somehow *Hood* is very narrow in the situation of a parens

1 patriae. We don't read it that way and we think that that case  
2 is controlling.

3           The other thing that they raise is the class action  
4 part of the CAFA case. There we also see this case as fairly  
5 stark. The class action part of the CAFA statute says that if  
6 there's a case that's brought under some kind of analogue to  
7 Rule 23, in other words, some kind of representative action  
8 that has a procedure that's like Rule 23, then you can call it  
9 a class action, but it has to be brought under one of those  
10 types of rules.

11           It can't -- and here, the Daniel's Law statute is not  
12 one of those procedural steps, it's not one of those procedural  
13 rules that allows a -- or presents to the Court some procedural  
14 mechanism for a class action or representative actions.

15           What they've said in their briefs is you could take  
16 any kind of cause of action, and if that cause of action can be  
17 brought in court as a class action, then somehow it makes that  
18 cause of action a class action. Under their theory, a contract  
19 cause of action or any statutory cause of action that you could  
20 bring in court and then bring it under Rule 23 or some state  
21 analogue to Rule 23 all of a sudden magically turns into a CAFA  
22 class action.

23           That's not the way the Third Circuit interprets the  
24 statute and that's not the way Daniel's Law should be  
25 interpreted. Daniel's Law is a very specific law. It's not a

1 procedural device for bringing a class action.

2 One other thing that's been brought up in some of  
3 these briefs is that we fraudulently joined --

4 THE COURT: There's two cases, Atlas vs. MyHeritage  
5 and I think Atlas vs. Thomson Reuters, the two cases that I  
6 recall.

7 MR. SHAW: Correct, that's my understanding.

8 THE COURT: What about that?

9 MR. SHAW: Your Honor, fraudulent joinder is slightly  
10 different than the analysis you do under kind of collusive  
11 jurisdiction.

12 THE COURT: It's quite different, yeah.

13 MR. SHAW: Yes, it's quite different.

14 And I think there the standard is you're not supposed  
15 to look to the merits of the case.

16 THE COURT: Right. But are the defendants looking to  
17 the merits? They have affidavits or declarations saying that  
18 these parties had nothing to do with the removal of names or  
19 the collection of names. And there's no evidence to the  
20 contrary, is there?

21 So, in other words, you're right, it's not a 12(b)(6)  
22 analysis. I have to determine whether it's a colorable claim  
23 and whether it's totally -- I think the Court of Appeals in  
24 *Batoff* says totally insubstantial and frivolous.

25 So what about that? You had opportunity for

1 discovery, didn't you, on this issue?

2 MR. SHAW: No, Your Honor, we did not engage in any  
3 discovery or --

4 THE COURT: You may not have, but you had the  
5 opportunity to.

6 MR. SHAW: Arguably. But in any event, I do think you  
7 articulated the standard correctly, whether essentially our  
8 complaint, which has to be taken as true, and you have to  
9 evaluate whether it states some claim against the non-diverse  
10 defendants and whether it's frivolous.

11 And we would say it's not frivolous and it does state  
12 a claim. And we think -- you know, where the kind of issue is  
13 joined on that part of the motion is it's true that they're  
14 saying they had no involvement in it, but our complaint is  
15 saying they did. Our complaint lists very clearly a claim  
16 against these defendants. We've articulated --

17 THE COURT: Well, what if you had said the governor  
18 of Pennsylvania had something to do with it? Could the  
19 governor file an affidavit saying I had nothing to do with  
20 Daniel's Law? And then would I have to allow that case to go  
21 forward?

22 MR. SHAW: Maybe not in that situation but --

23 THE COURT: Why not?

24 MR. SHAW: Because here what we've said is -- we  
25 haven't just named some party and not have any factual

1 allegations against them. But we've named a party and made  
2 specific factual allegations against them that are based on our  
3 investigation of the facts and our presentation of the facts,  
4 that those parties -- by the way, we go to -- the way those  
5 parties are in this case is because we went to a website, the  
6 website listed an address to contact for purposes of dealing  
7 with data privacy and taking down information, and then  
8 directly under it on the website, directly there it says those  
9 Thomson Reuters parties are the corporations that are  
10 presenting these addresses. That's one part of it.

11 The second part of it is they're trying to say we had  
12 nothing to do with it -- they're not saying we had nothing to  
13 do with it writ large, they're saying we didn't do the things  
14 that Daniel's Law prohibits. And in Daniel's Law there's verbs  
15 basically that say if you do these things --

16 THE COURT: Right.

17 MR. SHAW: -- you could be responsible.

18 And they're trying to take a very narrow  
19 interpretation of those verbs. And we're saying they did those  
20 things. Thomson Reuters did those things. And that's in  
21 our -- that's in our complaint.

22 And if Your Honor relies on their affidavits, then  
23 you're looking at the merits.

24 THE COURT: You're saying the complaint is  
25 sufficiently specific to make allegations?

1 MR. SHAW: Correct. And it's not --

2 THE COURT: And it ties them to Daniel's Law and the  
3 violations of Daniel's Law. And that simply because the  
4 defendant has provided an affidavit, that's just raising an  
5 issue which will have to be decided at a later time?

6 MR. SHAW: Correct, Your Honor. That's my outline, if  
7 I understand, they'll be making arguments on.

8 THE COURT: Those who are opposing you? Mr. Stio?

9 MR. STIO: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. STIO: Your Honor, Angelo Stio from Troutman  
12 Pepper Hamilton Sanders. I'll be arguing and addressing the  
13 federal diversity jurisdiction argument for the 37 cases, or  
14 defendants that are subject to a motion for remand with respect  
15 to diversity jurisdiction.

16 I have my colleagues here, David Cheifetz from Hogan  
17 Lovells, and he's going to address the CAFA mass action, a  
18 jurisdictional basis that this Court has; and my colleague,  
19 Sarah Hutchins from Parker Poe, who will address the CAFA class  
20 action.

21 In addition, Marcel Pratt, although he's not sitting  
22 at counsel table because there's not enough chairs, he's with  
23 Ballard Spahr, he represents Thomson Reuters and he will  
24 address the fraudulent joinder.

25 THE COURT: Thank you.

1 MR. STIO: So on diversity joinder, I think Your Honor  
2 has it right, the issue before the Court is whether Atlas is a  
3 real party in interest for purposes of diversity of  
4 citizenship. There is no dispute here about the amount in  
5 controversy with regard to diversity.

6 And, Your Honor, we've outlined in our brief that the  
7 Court has diversity jurisdiction here because Atlas is not a  
8 real party in interest and, therefore, under the federal case  
9 law, including *Grassi* and *Attorneys Trust*, its citizenship can  
10 be disregarded.

11 And I say this, Your Honor, because there's a long  
12 line of cases that say when there is an assignment or a  
13 transaction that has the practical effect of preventing  
14 jurisdiction, federal courts look at the totality of  
15 circumstances. And I believe Mr. Shaw does not dispute that.  
16 It's a factual inquiry. Your Honor said that.

17 And they also can look at the substance of the  
18 underlying transaction to make what *Attorneys Trust* said  
19 is an --

20 THE COURT: How is this different from the *Sprint* case  
21 in the Supreme Court which said that assignees have standing,  
22 which is, I think, for present purposes it's the same as being  
23 a real party in interest? And their payphone operators assign  
24 their small claims to what was called an aggregator as the  
25 assignee, and the Supreme Court said you look to, in effect,



1 the citizenship of the assignee?

2           Isn't that what we have here? We have a lot of small  
3 claims being assigned to Atlas because the -- it's impractical  
4 for all these little payphone operators or for the policemen in  
5 Camden and Newark to bring an action. So you aggregate them  
6 and you make an assignment. And the assignment on its face  
7 here appears to be a full assignment, as was the case in the  
8 *Sprint* case.

9           Why isn't this any different in terms of the first  
10 step we have to go through in terms of 1338 jurisdiction?

11           MR. STIO: Okay. So it's different for a number of  
12 reasons. One, and I think you pointed it out, *Sprint* did not  
13 involve a motion for remand. *Sprint* is a standing case, not is  
14 there a real party in interest for purposes of determining  
15 diversity. *Sprint* was actually filed in federal court.

16           THE COURT: It was.

17           MR. STIO: And assignments have been around for over  
18 100 years. It doesn't matter whether the assignment is valid  
19 under state law, it doesn't matter under common law.

20           When you look at the totality of circumstances, who is  
21 the real party in interest? In *Sprint*, the argument wasn't  
22 you, *Sprint* -- or you, aggregator attorney law firm, are not  
23 being here for purposes of destroying diversity. The question  
24 was, did they have Article III standing? And the Supreme Court  
25 there focused entirely on Article III standing and said they

1 do.

2 Here, you have -- when you look at the factors under  
3 *Grassi*, under *Attorneys Trust*, you have evidence that when the  
4 totality of circumstances are considered --

5 THE COURT: But aren't you conflating the two? First  
6 we have to decide whether it's a real party in interest. And  
7 even if it is a real party in interest, you still have to go to  
8 the second step, which is determining whether the assignments  
9 were for purposes of manufacturing diversity jurisdiction.

10 So I think it's a two-step process. Because even in  
11 the *Sprint* case, at the very end of the opinion, the Supreme  
12 Court said this is not a case where anybody's claiming the  
13 assignments were in bad faith. So they recognize that even if,  
14 in *Sprint*, that the assignee had standing or a real party in  
15 interest, the result might have been different if these  
16 assignments were not made in good faith, which gets into the  
17 collusion issue.

18 MR. STIO: Your Honor, I want to touch on that.

19 THE COURT: You think we should conflate these two  
20 steps?

21 MR. STIO: I don't think that there's two steps, and  
22 let me tell you why.

23 THE COURT: Okay.

24 MR. STIO: Your Honor, *Grassi* and *Attorneys Trust* have  
25 said you look at the totality of circumstances to determine who

1 is the real party in interest. And when you say, well, we have  
2 to look at that second step of did they do this to conflate or  
3 get into federal court, prevent federal court, that's motive.  
4 Right? That's not a separate step. And -- if we could put up  
5 Slide Number 1.

6 *Attorneys Trust* said the motive for an assignment is  
7 not a controlling factor. And the court put two steps there.  
8 This is in *Attorneys Trust* on page 956. Ninth Circuit Court of  
9 Appeals. They say, when they're going through diversity  
10 jurisdiction: There's no reason to give motive controlling  
11 weight in every case, although it will surely illuminate an  
12 otherwise hidden improper motive and may be virtually  
13 controlling in some cases. The objective fact of who really is  
14 the party in interest is the most important thing to be  
15 determined.

16 Okay. So in *Attorneys Trust* they say motive is not a  
17 separate analysis, it's part of the factors the court  
18 considers.

19 THE COURT: Isn't this basically an issue of fact?  
20 Why are they -- I mean, what device do they use to come in  
21 to -- do they manufacture jurisdiction? Isn't that really the  
22 issue?

23 MR. STIO: The issue is, are they defeating foreign  
24 defendants' rights to be in federal court? And there is a  
25 framework of factors that the Court can consider. And to say

1 that is it collusion, is it scam, is it fraudulent -- because  
2 that's what they want the Court to do, but that's not the test.  
3 The test is who's a real party in interest, what's the real  
4 substance of the underlying transaction?

5 And when you look at the size of the interest that  
6 goes back to the assignors or the purported covered persons,  
7 65 percent, a hundred percent of the relief with regard to  
8 injunctive relief is for the covered persons.

9 THE COURT: Right.

10 MR. STIO: So let's take a hypothetical. If they came  
11 in in the *Sprint* case and said we're going to have injunctive  
12 relief, a hundred percent of that relief belongs to the covered  
13 person.

14 And I would suggest to the Court, under *Attorneys*  
15 *Trust*, you can't have an entity for the --

16 THE COURT: But it was a total assignment, wasn't it?

17 MR. STIO: In *Sprint* it was --

18 THE COURT: It was every dime that was due to the  
19 payphone operators would go to the assignee. And then there  
20 was a separate agreement apparently that if the aggregator, the  
21 assignee, won the case, then the money would be turned over to  
22 the assignors for a fee, I think is the way that the court  
23 describes it. I don't know who was paying the counsel fees,  
24 but in any event -- and then the Supreme Court said it didn't  
25 matter what the assignee did with the money. In other words,

1 they could have given it to charity. So the court's not  
2 concerned about that.

3 So once Atlas is the assignee, whether they take the  
4 money and take it to Atlantic City to the casino or whether  
5 they give it to a charity or what they do -- I mean, isn't that  
6 what the Supreme Court said? I mean, Justice Breyer was  
7 talking about that, it didn't matter. The dissent had a  
8 different view, I understand.

9 MR. STIO: But they said it in the context of  
10 standing, a cognizable injury. If that were the case,  
11 *Attorneys Trust*, the 12 percent that went to the assignee, that  
12 was found improper because they applied the factors.

13 In *Grassi*, the two percent that went to the assignee,  
14 that was improper because they went through the factors.

15 And there's numerous cases in our briefing that talks  
16 about these percentages. You have *Attorneys Trust*, you have  
17 *Airlines Reporting vs. S&N Travel*, you have *Harrell vs. Sumner*  
18 *Contracting* where 50 percent went back to the assignee. All of  
19 these were found to be improper for purposes of diversity. Not  
20 standing, but purposes of diversity.

21 And all we're saying is you can disregard Atlas's  
22 citizenship when you look through the factors. One, there is a  
23 substantial interest that these individual assignees retain.  
24 65 percent of any recovery, 100 percent of injunctive relief.

25 THE COURT: But the real question is -- the Court has

1 to figure out, what is really going on here? I mean --

2 MR. STIO: Correct.

3 THE COURT: These steps in *Grassi* and *Attorneys Trust*  
4 are just tools for the Court to use to find out what is really  
5 going on here. Is the purpose either to get into federal court  
6 or to stay out of federal court in a collusive manner?

7 So that's what -- it's really a factual question. And  
8 I have to look at the totality of the circumstances.

9 MR. STIO: Agree with that.

10 THE COURT: Now, do you really think any member of the  
11 New Jersey Assembly or the New Jersey Senate was thinking about  
12 diversity jurisdiction when they passed Daniel's Law?

13 MR. STIO: Absolutely not. But that's not a  
14 consideration.

15 THE COURT: Okay. Now, do you think any police  
16 officer in the state of New Jersey or any prosecutor, when an  
17 assignment was made to Atlas, was thinking about diversity  
18 jurisdiction, that the purpose of the assignment was either to  
19 get in to federal court or to stay out of federal court? Do  
20 you think any of those people were thinking about that as a  
21 motive or as a purpose?

22 MR. STIO: I think so, Your Honor. Again, motive is  
23 not controlling. But I do think that that one is wrong.

24 THE COURT: So you -- what evidence is there that that  
25 was happening?

1           The officer on the beat doesn't want his home address  
2 and unlisted phone advertised or disseminated, that he was  
3 sitting back and saying, yeah, I'm going to assign this to  
4 Atlas because I either want to be in federal court or I don't  
5 want to be in -- I'd rather be in the Superior Court of Hudson  
6 County rather than in the federal court.

7           MR. STIO: So, Your Honor, that -- A, I would ask the  
8 Court to take a look at the Supreme Court decision in *Kramer*  
9 and the *Long John Silver's* case that say it doesn't matter if  
10 an assignment is valid under state law. So I'll start with  
11 that --

12           THE COURT: I agree with that.

13           MR. STIO: Federal question.

14           THE COURT: You're not questioning the validity of the  
15 assignment.

16           MR. STIO: Yes.

17           Two, you ask if any police officer or judge sat around  
18 saying, do I think that their assignment is going to create a  
19 diversity jurisdiction?

20           THE COURT: Or not. One or the other.

21           MR. STIO: So what I would point Your Honor to are the  
22 factors. And one of the factors here is prior interest in the  
23 assigned claim.

24           THE COURT: Right.

25           MR. STIO: Atlas has zero interest in the assigned

1 claim.

2 Second factor is, did they actually pay for the  
3 assignment? Did they give consideration? Atlas did not give  
4 any consideration for the assignment here. And the reason why  
5 is Atlas created a system where they have two products. Right?  
6 They have the platform services and then they have what they  
7 call enforcement action brought on behalf of Atlas.

8 THE COURT: Right. Okay.

9 MR. STIO: They're contained in terms of service or  
10 service terms. It's not a contract, it's a boilerplate  
11 document that's on a website that all of these police officers  
12 are told by the union bosses sign up for.

13 THE COURT: Well, there's certainly -- see, it's not a  
14 -- there's certainly reliance, isn't there? Wouldn't there be  
15 principles of estoppel and --

16 MR. STIO: Well, it's a negotiated contract, Your  
17 Honor.

18 THE COURT: Well, you're saying it's a contract of  
19 adhesion, is that what you're saying it is?

20 MR. STIO: It's in our brief. Yeah.

21 THE COURT: Yes. But what -- and you say that's  
22 relevant to --

23 MR. STIO: If the assignment is invalid, it's  
24 absolutely relevant. Even if the Court --

25 THE COURT: So you're claiming that the assignment is



1 invalid now under state law?

2 MR. STIO: If the assignment isn't valid, what right  
3 do they have to bring a claim?

4 THE COURT: You're saying it is invalid?

5 MR. STIO: If it is.

6 THE COURT: No. What is your position, it is or isn't  
7 it?

8 MR. STIO: We weren't allowed to take discovery on  
9 that.

10 THE COURT: All right.

11 MR. STIO: But I can tell you that when you look at  
12 the service terms -- it's on a website, it's a click of a  
13 button and it's non-negotiable. And the parties are not in  
14 equal bargaining power, right? You have members of a union who  
15 are being told by the union chiefs, sign up for this. And you  
16 saw that, Pat Colligan's notice back in 2023. Hey, sign up for  
17 this. There was no choice.

18 So to ask would they intend that, no.

19 THE COURT: Well, there certainly was a choice. They  
20 didn't have to sign up for it.

21 MR. STIO: Well, they didn't have to. But --

22 THE COURT: And they could have -- I mean, we do have  
23 six or eight individual plaintiffs in this case as well as  
24 Atlas.

25 MR. STIO: We do. And those six -- let me go through

1 those six individual plaintiffs.

2 THE COURT: We have two John Does and I think six  
3 named plaintiffs.

4 MR. STIO: There's three named ones, right? There's  
5 Patrick Colligan, who is past president of the PBA. He is in,  
6 I think, 65 of the cases in federal court.

7 There's William Sullivan, who is the president of the  
8 Local 105, which is the correction officer's union. He is a  
9 named plaintiff in 59 of these cases.

10 And then there's Peter -- and I'm going to butcher his  
11 name -- Andreyev, who is the current president of the PBA, and  
12 he's in 75 of these cases.

13 Now, I would submit to the Court that the reason why  
14 the union leadership is in these cases is because they're  
15 involved in strategy and decision. They have to be. They're a  
16 party to the case. But they're union members, there's  
17 allegiors. They represent the constituents with all these  
18 covered persons.

19 And that's why I hesitated, Your Honor, when you said,  
20 well, do you think a police officer sits around? No, I don't  
21 think the police officers knew anything about what was going  
22 on. They were told to sign up.

23 Do I think that Atlas and the unions had something  
24 involved in how do we maximize recovery, how do we make it  
25 difficult for these companies? Absolutely.

1 THE COURT: Well, that's a different question as to  
2 whether there's diversity jurisdiction.

3 MR. STIO: No, it goes to diversity jurisdiction  
4 because there's, A, the interest here substantially and the  
5 relief goes to the covered people.

6 Two, Atlas didn't pay anything for the assignments.  
7 Zero.

8 Three, the assignments here occurred either the day  
9 before all these complaints were filed -- another relevant  
10 factor in *Attorneys Trust* -- or after the complaints were  
11 filed.

12 THE COURT: But they did have a relationship  
13 previously. In other words, maybe the assignment wasn't  
14 formalized, but they had had discussions, had they not, with  
15 the unions and so forth?

16 MR. STIO: They have contracts with the union.

17 THE COURT: Yes. So that goes back beyond the day  
18 before the complaints were filed.

19 MR. STIO: No. But did they have a interest in the  
20 claim? And they didn't. Because the claim doesn't exist until  
21 there's an alleged violation of the law. And Atlas doesn't  
22 have a right to claim until they send out that confirmation.

23 THE COURT: Ten days to expire, right.

24 MR. STIO: Right. They did it the day before they  
25 filed suit. *Attorneys Trust*, directly on point, says if it's

1 around the time close to when suit is filed and if there's no  
2 consideration, that's indicative of not the real party in  
3 interest here.

4 THE COURT: Indicative or controlled?

5 MR. STIO: No factor is controlling. But it does show  
6 the hallmarks of attempts to get into federal court or defeat  
7 someone from getting into federal court.

8 And I want to say that *Attorneys Trust* and *Grassi*  
9 didn't -- the judge didn't just say I like these factors, I'm  
10 going to use it. When you read the opinions, the judge  
11 surveyed what was happening in federal courts. And they have  
12 adapted the law recognizing the different tactics that parties  
13 use to either get into federal court or defeat federal court.  
14 There's no statute as to defeating federal court. But  
15 *Attorneys Trust* --

16 THE COURT: But there are analogous cases which  
17 say that -- right, 1359 goes one way, but I think there's a  
18 large body of law which says you also figure out why people  
19 want to avoid federal court.

20 MR. STIO: Correct. And they developed a frame --

21 THE COURT: Yes. It's analogous to what 1359 says.

22 MR. STIO: And so -- and let me take it another step  
23 back.

24 When we talk about motive, motive, motive, those  
25 motive decisions came out because parties said, yeah, we added

1 Angelo Stio to the complaint because Angelo's from Delaware and  
2 we want it to be in federal court.

3 And the courts traditionally didn't look at motive.  
4 In fact, there's a Third Circuit case and a Supreme Court  
5 case -- the Third Circuit case is *Mecon vs. Fitzsimmons*, 284  
6 U.S. 183 (1931), where it involved the appointment --

7 THE COURT: What's the name of the case again?

8 MR. STIO: *Mecon*, M-E-C-O-N. *Mecon vs. Fitzsimmons*.

9 THE COURT: Okay.

10 MR. STIO: And it involved the appointment of an  
11 administrator. And the court said we're not getting into  
12 motive, motive isn't important here.

13 And then there's the *Jaffe* case from the Third  
14 Circuit, they said the same thing, albeit in a different  
15 context -- right? -- appointment of a fiduciary duty or  
16 appointment of a guardian. But they said, no, motive doesn't  
17 even come into play here, and they looked at other factors. If  
18 you look at even --

19 THE COURT: How about the *McSparran* case in the Court  
20 of Appeals?

21 MR. STIO: Say it again?

22 THE COURT: The *McSparran* case.

23 MR. STIO: I am sorry, I can't hear you.

24 THE COURT: The *McSparran* case.

25 MR. STIO: Yes, there's a *McSparran* case where they

1 discuss that. And they even said -- they drew a distinction  
2 about a motive in that case and even drew a distinction between  
3 the analysis under --

4 THE COURT: It involved a situation where a lawyer in  
5 Philadelphia would appoint his secretary from New Jersey as the  
6 administrator or guardian --

7 MR. STIO: Correct.

8 THE COURT: -- in order to get into the Eastern  
9 District of Pennsylvania to avoid, in those days, the Common  
10 Pleas Court.

11 MR. STIO: Correct, yeah.

12 THE COURT: And there are a lot of cases --

13 (Simultaneous speakers.)

14 MR. STIO: And the *McSparran* case actually cites to  
15 *Jaffe* and *Mecon*.

16 But, Your Honor, there's other factors here too. The  
17 other factors include prior interest in the case, in the claim.  
18 And Atlas has said, well, we have a prior interest in the claim  
19 because we have this platform.

20 Atlas has two products, and their website advertises  
21 it as two products. If you look -- Slide 2, Stephanie. This  
22 is from Exhibit 12 to my declaration. The two products under  
23 paragraph 5, there's subscription fee services and then there's  
24 outcome-base service fees that are computed as a percentage of  
25 any damage awards or settlement.

1           They're in two buckets. Right? Subscription fee  
2 services are the platform. Emails, sign-up. The unions pay  
3 for that. The record before the Court here is that the unions  
4 pay the per-person fee there. That's Exhibit 4, 5, and 6 to my  
5 declaration.

6           The second bucket is these outcome-based service fees.  
7 Unions don't pay for that, covered people don't pay for that.  
8 That is something that is on a contingency fee basis for the  
9 sole purpose of collecting liquidated damages. And when a  
10 party engages in a transaction to bring in another party to act  
11 as just a conduit for a remedy, not for purposes of standing,  
12 but for purposes of diversity jurisdiction, courts look at the  
13 substance of the transaction.

14           And I would submit to the Court that if you look at  
15 lack of consideration for the assignment; the timing when the  
16 assignments occurred, was it a day of the complaint; who is the  
17 real party in interest or substantial interest, the covered  
18 people, it is not the type of case where you can sit back and  
19 say Atlas is here because they had a prior interest in the  
20 case. Atlas is here --

21           THE COURT: I understand.

22           MR. STIO: -- to get a substantial recovery.

23           The other thing that's important is Atlas has said,  
24 well, we pay all of our legal -- we pay all of our legal fees  
25 and we make strategic decisions, therefore, we're the real

1 party in interest. That's not correct.

2 And I'll show the Court, their corporate designee  
3 testified at his deposition that these lawsuits are being  
4 handled on a contingency fee basis. And if you go to my  
5 declaration, Exhibit 1, page 92.

6 Your Honor, he was asked: Who is paying the legal  
7 fees?

8 And Mr. Atkins said the following: My understanding  
9 of the flow of legal fees is that some of the fees might be  
10 paid by Atlas, other fees would -- and I'm not a lawyer here so  
11 I'm speaking to it as a layperson. Other legal fees would be  
12 included in a contingency-type arrangement where if there were  
13 successful financial recovery in the case.

14 They're acting for a contingency fee basis. And when  
15 I asked were fees being paid for the enforcement action, if you  
16 look at page 93, line 6, his response is: Not with respect to  
17 any losses that have currently been filed.

18 MR. PARIKH: Mr. Stio -- Your Honor, I just want to  
19 make sure, Mr. Stio -- some of these things are filed under  
20 seal. We're in open court, there's a transcript. I just want  
21 to make sure that Mr. Stio is aware of that.

22 THE COURT: That's okay. We can't hide this forever.

23 MR. PARIKH: No, I understand. I just wanted to raise  
24 that.

25 THE COURT: I don't know if it's fine, Mr. Stio, or



1 not, but go ahead.

2 MR. STIO: So, A, their witness testified that they're  
3 not paying legal fees here. So the statement in their reply  
4 brief that legal fees are being paid by Atlas for these  
5 litigations, according to their own corporate designee, is  
6 false.

7 Second, if you look at the service terms -- and  
8 Stephanie, if you go to Slide 3.

9 The service terms make clear that the parties on the  
10 hook for attorney's fees here are the assignors, the covered  
11 persons.

12 Under Section 4(E)(ii), they talk about settlements  
13 and they talk about recoveries. It makes clear that the  
14 covered persons get the net amount of any settlement received,  
15 and that is -- net amount means: Deducts it from amounts  
16 actually collected less third-party attorney's fees and  
17 associated investigation, litigation and collection costs and  
18 expenses.

19 THE COURT: That's not going to leave much for the  
20 plaintiff, a thousand dollars.

21 MR. STIO: But it goes to -- another factor, though,  
22 is that it goes to the issue of who's paying the legal fees,  
23 who's involved in the strategy. And I would submit to the  
24 Court the covered people are on the hook for these legal fees,  
25 no risk for Atlas.

1 Two, strategy. I mentioned it. Three union heads are  
2 named plaintiffs. And we asked them, how did you determine the  
3 named plaintiffs in these cases? Their response was, it's  
4 attorney-client privilege.

5 So, you know, what they can't do is give us the stiff  
6 arm to discuss how did these three individuals become named  
7 plaintiffs, and then come into court and say, well, there's no  
8 bad motive here, everything is attorney-client privilege. They  
9 can't. And they can't --

10 THE COURT: It's not going to be relevant what the  
11 named plaintiffs do because there's no assignment.

12 MR. STIO: There is no assignment as to named  
13 plaintiffs but --

14 THE COURT: Yeah, so I don't know --

15 MR. STIO: -- there was a conscious decision made as  
16 to strategy. How do we get --

17 THE COURT: Mr. Stio, you've been a lawyer a long  
18 time. There's always strategy, isn't there, as to who's going  
19 to be a party to a case and --

20 MR. STIO: Absolutely.

21 THE COURT: I mean, that was the whole idea of Rosa  
22 Parks being the plaintiff in the early civil rights case. Boy,  
23 there was strategy to pick her as opposed to somebody else.  
24 There's nothing wrong with that.

25 MR. STIO: Well, if you do it so that you can deny an

1 out-of-state party access to federal court, there is something  
2 wrong with it with regard to diversity jurisdiction, Your  
3 Honor. Not standing, but diversity jurisdiction.

4 Your Honor, the other issue that I just want to touch  
5 on is prejudice. Your Honor, another factor under *Attorneys*  
6 *Trust* and *Grassi* is prejudice. Is there -- when all of these  
7 factors are layered on and you look at the real party in  
8 interest, what is the substance of this transaction? Was it  
9 made improperly because the party that is named here for  
10 purposes of diversity isn't the real party in interest?

11 You know, federal courts and federal jurisdiction  
12 exists to allow defendants, out-of-state defendants, to be in  
13 federal court and not be subject -- and I'll say this  
14 pejoratively -- are hometowned by local courts and local  
15 politics.

16 These out-of-state defendants had went to the Third  
17 Circuit and had a judge from Pennsylvania, who was not subject  
18 to this law, and we did it because an appearance of  
19 impropriety. There's a lot of prejudice here if we don't look  
20 at all the factors and these defendants now have to go back  
21 into state court. We don't think that Atlas is the real party  
22 in interest.

23 And that's my presentation, Your Honor. Thank  
24 you.

25 THE COURT: Thank you.

1 Who wants to go next? Good morning.

2 MR. CHEIFETZ: Good morning, Your Honor. Give me one  
3 second to set up.

4 THE COURT: Please state your name for the record.

5 MR. CHEIFETZ: Sure. David Cheifetz from Hogan  
6 Lovells. I represent the defendants in the Lifetime Value  
7 Company case. And as Mr. Stio explained, I'll be explaining  
8 the CAFA mass action argument on behalf of all of the  
9 defendants.

10 THE COURT: Thank you.

11 MR. CHEIFETZ: As Your Honor identified before, this  
12 is a separate and independent basis for removal that the  
13 defendants have asserted here in many of the cases. There's a  
14 lot to unpack, but let me start with a simple and undisputed  
15 observation about all of the removed actions here.

16 Each of the actions were filed by Atlas to aggregate  
17 and prosecute the alleged monetary relief claims of thousands  
18 and thousands of identified covered persons under a common  
19 statute and in a single lawsuit. It's somewhat remarkable, I  
20 would submit, that these actions would be suggested to be  
21 anything other than mass actions because they're, of course,  
22 large collective actions that propose to join together the  
23 claims of many more than a hundred different persons by using  
24 mass assignments.

25 Now, Atlas says that it discovered a loophole, a new

1 CAFA loophole, and that actions that they bring by way of mass  
2 assignments are not actually mass actions at all, and that they  
3 escape federal jurisdiction simply because Atlas chose to list  
4 only itself and a handful of other individuals in the captions  
5 to the complaints here.

6 THE COURT: Isn't that what the Supreme Court says in  
7 *Hood*, there has to be a hundred named plaintiffs? And there  
8 are a hundred named plaintiffs.

9 MR. CHEIFETZ: Absolutely. I'm certainly not blind  
10 to the language of *Hood*. And as we would submit, *Hood* is  
11 entirely --

12 THE COURT: That's really the issue, isn't it?

13 MR. CHEIFETZ: It is. And of course, that's the  
14 support Atlas relies on to effectively say there should be a  
15 new loophole to CAFA's mass action provision. *Hood* --

16 THE COURT: It's not a loophole if the Supreme Court  
17 says that's what the statute means.

18 MR. CHEIFETZ: That's fair, Your Honor, but *Hood* had  
19 nothing to do with mass assignments. It had nothing to do with  
20 mass assignments.

21 THE COURT: Okay. But the Supreme Court doesn't limit  
22 it to that. It says they're reading the statute -- regardless  
23 of what the underlying claim is, there have got to be a hundred  
24 plaintiffs, and there were a hundred.

25 MR. CHEIFETZ: Understood. Absolutely, Your Honor.

1 But just because the Supreme Court didn't use the magic words  
2 that its holding was limited to the *parens patriae* context in  
3 which it was decided doesn't somehow make the entire context  
4 and reasoning of *Hood* somehow irrelevant.

5 THE COURT: So what I would have to decide then is  
6 whether or not the Supreme Court meant a hundred named  
7 plaintiffs with respect to any mass tort action or whether it's  
8 limited to *parens patriae* cases? So that's going to be the  
9 issue, right?

10 MR. CHEIFETZ: That's correct, Your Honor. I think  
11 that's fair. And I think for many, many reasons the Court can  
12 conclude that.

13 I would say that *Hood*, ironically enough, recognized  
14 that the very purpose of the CAFA mass action provision was to  
15 "function largely as a backstop to ensure that CAFA's relaxed  
16 jurisdictional rules could not be evaded."

17 And nothing about *Hood* -- and we could get into this  
18 for sure -- requires this Court to adopt what I'm terming a new  
19 loophole, because *Hood* didn't address the assignment issue at  
20 all.

21 Atlas is suggesting that mass assignments allow it to  
22 avoid mass action jurisdiction, and nothing about *Hood* would  
23 allow Atlas to evade --

24 THE COURT: Well, I understand. But the issue is  
25 regardless of what happened, you still need a hundred

1 plaintiffs, according to their argument. And the one reading  
2 of *Hood* would say you need a hundred plaintiffs, regardless of  
3 whether there are assignments, whether there weren't  
4 assignments, regardless of what the underlying claims are.

5 MR. CHEIFETZ: That's true. And I want to talk about  
6 what -- we can turn to *Hood*, but I do think it's -- and I'm  
7 going to turn to *Hood*, I promise, but I do think it's important  
8 to acknowledge at the outset that -- let's put aside *Hood* for  
9 just a moment because it's important.

10 Nobody disputes here these would otherwise be mass  
11 actions. And as the Third Circuit has recognized -- let's  
12 assume *Hood* is inapposite, let's assume I convince Your Honor  
13 *Hood* is inapplicable.

14 Under Third Circuit controlling law, mass actions are  
15 basically "collective actions that utilize large scale joinder  
16 or other consolidation mechanisms to aggregate claims."  
17 That's what the *Robert D. Mabe* case holds in the Third  
18 Circuit. That's exactly what these actions are. Atlas has  
19 conceded --

20 THE COURT: Is that before *Hood* or after?

21 MR. CHEIFETZ: After. And Atlas has conceded as  
22 much.

23 The whole purpose of the mass assignment here,  
24 according to Atlas, was so that it could collectively prosecute  
25 and aggregate thousands of covered persons' claims in one

1 action against each defendant group.

2 We've heard a lot about *Sprint*. *Sprint's* important.  
3 They cite *Sprint*, they rely on *Sprint*. But if Your Honor  
4 looked at page 291 of *Sprint*, you'll see that in *Sprint* the  
5 court explained that a mass assignee, or as the Supreme Court  
6 termed it an aggregator, is "one of several methods for  
7 bringing about aggregation of claims; i.e., they are but one of  
8 several methods by which multiple similarly-situated parties  
9 get similar claims resolved at one time and in one federal  
10 forum."

11 And not only that, the Supreme Court specifically  
12 analogized a mass assignee like Atlas, or an aggregator, to  
13 Federal Rule of Civil Procedure Rule 20(a), which allows  
14 multi-party joinder.

15 So the critical point I want to make is under the  
16 Supreme Court's own analysis in *Sprint* and, frankly, common  
17 sense along with the Third Circuit's analysis, litigation by  
18 mass assignment is just mass joinder by a different case. It  
19 involves claims of many different people who want their claims  
20 heard together in a single lawsuit. And that's precisely the  
21 kind of collective action that the Third Circuit tells us is a  
22 mass action.

23 THE COURT: But whose claims are they? Once the  
24 assignment is made, it's the claim of the assignee, isn't it?  
25 It's one person that has a lot of claims.



1 MR. CHEIFETZ: We disagree with that, Your Honor, here  
2 in particular, because of the factors Mr. Stio identified where  
3 the covered persons retained the lion's share of the legal and  
4 financial interest here. We don't believe it's so simple to  
5 say that the only claims here belong to Atlas.

6 It might be different, as Your Honor observed at the  
7 last hearing, if Atlas had paid monetary consideration upfront  
8 for the assignment, the covered persons took whatever they were  
9 agreeable to and then let Atlas pursue recovery of Atlas's own  
10 claim. That's not what happened here at all.

11 There was no outright giving of the claim from the  
12 covered person to Atlas for money. The covered person said  
13 we're going to retain most of the interest here, you go and try  
14 to collect for us, and in that sense Atlas is very much an  
15 assignee for collection purposes, as many different cases have  
16 explained that.

17 And I want to turn to *Hood* because, obviously, *Hood* is  
18 important here. Context matters. And we don't think *Hood*  
19 applies to these very different facts and I want to explain  
20 why.

21 First of all, it matters in many different ways here.  
22 *Hood* was actually part of a series of CAFA decisions by the  
23 Supreme Court in a short period of time. Less than ten months  
24 prior to *Hood*, in *Standard Oil(Sic) vs. Knowles*, the Supreme  
25 Court accepted CAFA mass action jurisdiction and rejected an

1 argument that it said would have elevated forum over substance.  
2 That was just ten months prior to *Hood*.

3 Ten months after *Hood*, the Supreme Court in *Dart*  
4 *Cherokee* emphasized that CAFA's removal provisions should be  
5 read broadly with a strong preference for federal jurisdiction  
6 and no presumption against removal. And that was to effectuate  
7 congressional intent to broaden federal jurisdiction in certain  
8 cases.

9 THE COURT: Did either of those cases talk about the  
10 hundred plaintiff --

11 MR. CHEIFETZ: No, they don't, but it's context.

12 More importantly, the specific parens patriae context  
13 here makes all the difference. The specific question presented  
14 in *Hood* highlights this point.

15 The court said on page 164 of the *Hood* decision: The  
16 question presented is whether a suit filed by a state as the  
17 sole plaintiff constitutes a mass action where it includes a  
18 claim for restitution based on injuries suffered by the state  
19 citizens. We hold that it does not because the state of  
20 Mississippi is the only named plaintiff.

21 Later on, on page 173 to 174, the court said: If  
22 Congress had wanted representative actions brought by states as  
23 sole plaintiffs to be removable under CAFA, it would have done  
24 so in the class action provision, not mass action.

25 That further demonstrates the narrow question

1 presented in *Hood*.

2 And why is this *parens patriae* context so important  
3 here? Because think about what a *parens patriae* suit is. It's  
4 a suit brought by a state in the state's own sovereign or  
5 quasi-sovereign interest, as the Supreme Court has told us, on  
6 behalf of the state. It cannot bring the individual claims of  
7 individual private citizens and stand in their shoes.

8 And here, of course, that's exactly what Atlas  
9 professes to do. It professes not to be a sovereign entity  
10 like a state, it says it stands in the shoes of 19,000 known  
11 people who have their own private claims who want them pursued  
12 in litigation.

13 And it's not just that the assignments are different.  
14 It makes it what Third Circuit courts have said is a  
15 paradigmatic counter example to a *parens patriae* suit because  
16 if a state, for example, were to proceed by way of assignment,  
17 not *parens patriae* authority, or proceed as a collection agent,  
18 the Supreme Court in *Alfred Snapp* has said: In that context  
19 the state would be no more than a nominal party asserting the  
20 rights and claims of individual citizens.

21 And that's what the *Alfred Snapp* case said in the  
22 Supreme Court, that's what the Third Circuit has said in the  
23 *Harbour Portfolio Capital* case and --

24 THE COURT: I understand what you're -- but doesn't  
25 the *Hood* case say we don't look at the issue of real party in

1 interest. It may be relevant for a lot of other purposes, even  
2 in this case, but you don't look at who the real party in  
3 interest is.

4 It goes on to say that when it begins to parse the  
5 statute so --

6 MR. CHEIFETZ: And that's not -- I am sorry, go  
7 ahead.

8 THE COURT: So you don't look at the real party in  
9 interest here. You look at what the statute says, and it talks  
10 about, the Supreme Court's view, named plaintiffs, not whether  
11 they're real parties in interest.

12 MR. CHEIFETZ: That's right. And that's not our  
13 theory in this case. I want to be clear about this.

14 Obviously, a real party in interest is relevant to the  
15 collusive assignment argument that you just heard.

16 THE COURT: Right.

17 MR. CHEIFETZ: That is a theory advanced in *Hood* for  
18 why there should have been CAFA jurisdiction. That is not the  
19 theory defendants advance here for CAFA mass action  
20 jurisdiction.

21 It's very different. Because in the *parens patriae*  
22 context, the defendants' arguments in *Hood* was there are  
23 millions of unknown, unnamed Mississippi citizens who have this  
24 indirect interest in the state's claim. It was a very  
25 attenuated argument. And the defendants there said you should

1 treat them as real parties in interest because of that  
2 attenuated interest, they might benefit some way from the  
3 states recovery. That is not what we're arguing here.

4 THE COURT: Well, the Supreme Court simply could have  
5 said *parens patriae* cases, they're not mass torts, because it's  
6 the sovereign state of Mississippi or quasi-sovereign state --  
7 it's the state's claim, that's only one claim, even though they  
8 mask it in terms of representing the people of the state.

9 MR. CHEIFETZ: Right.

10 THE COURT: They could have ended right there.

11 MR. CHEIFETZ: They could have.

12 THE COURT: And then they go on to talk about what the  
13 wording of the statute is.

14 MR. CHEIFETZ: They could have. And I acknowledge,  
15 they did not say that this holding is limited to the *parens*  
16 *patriae*, I acknowledge that. But they don't have to say that  
17 to make the whole context -- the context still matters.

18 And think about this. The Supreme Court has said --  
19 and they have said this very clearly. This is in the Franchise  
20 Tax Board case, 463 U.S. 1, 21, note 22, that where a state  
21 brings a lawsuit in its own state court, there are sovereignty  
22 concerns and federalism concerns that make the court loathe to  
23 allow removal of that action.

24 The court said in that case --

25 THE COURT: In this case --

1 MR. CHEIFETZ: I know --

2 THE COURT: In *Hood*, Mississippi was the plaintiff.  
3 It wasn't the defendant being forced into federal court,  
4 correct?

5 MR. CHEIFETZ: No, that's not correct. The state  
6 filed in state court and the case was removed.

7 THE COURT: Okay. I'm incorrect on that.

8 MR. CHEIFETZ: And my point is, the Supreme Court is  
9 very protective of state --

10 THE COURT: It didn't say anything about that in the  
11 *Hood* opinion.

12 MR. CHEIFETZ: I understand that. Again, I'm giving  
13 the Court important context for why I think the Supreme Court  
14 was particularly concerned -- and we know that they were  
15 because of the Franchise Tax Board case -- with state suits  
16 brought in their own state courts.

17 Now, Your Honor mentions the reasoning and the  
18 rationale of *Hood*, and again, we think that on the very  
19 different facts it doesn't apply, but even if *Hood* applies  
20 here, we believe it should be read narrowly and applied that  
21 way.

22 *Hood* cannot mean just look at the names in the CAFA.  
23 It's a gross over-simplification of *Hood* to say that. It would  
24 be -- I think we've heard the argument that -- and *Hood* even  
25 said this, it's important to have simple jurisdictional rules

1 that courts can adhere to, but it shouldn't be so simple for  
2 parties to be able to circumvent a federal jurisdictional  
3 statute.

4 And remember, the intent of CAFA, the Supreme Court  
5 told us, was to expand federal jurisdiction. So we believe  
6 that with respect to mass assignments, which are mass joinder  
7 in name -- not in name, but in substance, as *Sprint* tells us,  
8 would elevate form over substance in the way that *Knowles*, in  
9 the Supreme Court case *Knowles* said ten months before *Hood*,  
10 you shouldn't do in CAFA, it would undermine congressional  
11 intent to broaden jurisdiction, contrary to what *Dart Cherokee*  
12 said by the Supreme Court ten months later.

13 The reference to named plaintiffs here we,  
14 respectfully, would submit should be understood more to  
15 distinguish between the types of unidentified, unknown,  
16 anonymous citizens in Mississippi and the known, identified  
17 covered persons here.

18 There's a big, big difference between the two --

19 THE COURT: But the Supreme Court could have easily  
20 said that. That's a very strange way to reach that result.

21 MR. CHEIFETZ: I understand that. But look at the  
22 reasoning behind the ultimate holding in *Hood* and you can see  
23 why it turns on that difference. Again, *Hood* turns on the  
24 difference between those unspecified, unnamed, attenuated real  
25 parties in interest, Mississippi citizens which we're not

1 talking about here, who have no claims of their own in *Hood*.  
2 They had no individual claims.

3 And what the Supreme Court said was we didn't  
4 find --

5 THE COURT: If that was the point -- and I see what  
6 you're saying -- the Supreme Court could have said simply  
7 there's only one party here, can't be a mass tort. The state  
8 of Mississippi is the only party here that we're talking about.

9 MR. CHEIFETZ: Well, that would be what the Supreme  
10 Court said. But I'm suggesting if you look and unpack the  
11 actual reasoning behind the holding, you'll see that it turns  
12 on this important point.

13 The issue with respect to needing to be a plaintiff,  
14 not a person. First of all, CAFA doesn't use the phrase "named  
15 plaintiffs," so the idea that the Supreme Court was laying down  
16 a rule that applies in all potential context, notwithstanding  
17 what it said in *Hood* about mass assignment being akin to  
18 multiple party joinder, to say that you have to simply count up  
19 the people that the plaintiff names in the caption and elevate  
20 all form over substance, there's nothing about *Hood* that  
21 requires the Court to do that.

22 Now, I acknowledge the Supreme Court did say you  
23 should read persons to mean plaintiffs, but look at what the  
24 Supreme Court said about that. It had to be understood as  
25 plaintiffs who are pursuing claims in court. And that's



1 exactly what the covered persons are doing here. They should  
2 be treated as plaintiffs.

3 And even if the Court were to apply *Hood*, we believe  
4 that it should extend *Hood* to this mass assignment context.  
5 The Court should just ask, are the covered persons fairly  
6 considered plaintiffs here in the way that the Supreme Court  
7 went through in *Hood*?

8 And the answer to that is yes for many, many reasons.  
9 And I just want to, before covering that, just pause on that  
10 for a second and look at the language in *Hood*, because Your  
11 Honor is right to focus on it.

12 With respect to the requirement in *Hood* that you have  
13 to identify plaintiffs, here's what the *Hood* court said on  
14 page 169: 100 or more persons cannot be unspecified  
15 individuals who have no actual participation in the suit, but  
16 instead, the very plaintiffs referred to later, the parties  
17 proposing to join their claims in a single trial.

18 It's parties who have their own claims proposing to  
19 try them. The unnamed Mississippi citizens in *Hood* had no  
20 claims, they couldn't have been proposing to try anything.  
21 Here it's completely different.

22 THE COURT: Well, of course you -- the question  
23 becomes after the assignment, do they have any claims? Do the  
24 19,000 people have any claims?

25 MR. CHEIFETZ: Yes. And that goes back -- and I'll

1 explain why.

2 First of all, that goes back -- first of all, I think  
3 it's undisputed that, unlike the Mississippi citizens, these  
4 covered persons allegedly have their own personal claims.

5 THE COURT: Not anymore after the assignment.

6 MR. CHEIFETZ: Before the assignment, at a minimum,  
7 that's undisputed.

8 THE COURT: Right.

9 MR. CHEIFETZ: In *Hood*, there were never claims  
10 of --

11 THE COURT: I understand, yes.

12 MR. CHEIFETZ: Now, we heard earlier that the covered  
13 persons here will not be participants in the suit, but that's a  
14 gross over-simplification and not correct.

15 The reason that they are actual participants in this  
16 suit is that they did allegedly have claims that they asked a  
17 third party to go and pursue for them. And for example --

18 THE COURT: The fact that they might be a witness at a  
19 trial doesn't necessarily mean they're parties.

20 MR. CHEIFETZ: Well, let's take discovery, for  
21 example, Your Honor. The courts in this circuit and elsewhere  
22 have made clear that where parties proceed by way of  
23 assignments, it is as if those assignors were individual  
24 litigants in the lawsuit for discovery purposes.

25 And that's because courts don't allow assignors to

1 assign their claims as a sword and then use the shield of that  
2 to avoid being treated as parties for discovery purposes. I  
3 can give the Court an example of a case. It's *MSP Recovery*  
4 *Claims* --

5 THE COURT: When you say "treated as parties to the  
6 lawsuit" --

7 MR. CHEIFETZ: I'll read --

8 THE COURT: -- for diversity purposes or just using  
9 the term "somebody is a third party," meaning not -- an  
10 individual who is not a party to a case, not a named party?

11 MR. CHEIFETZ: Right. For example, in the *MSP*  
12 *Recovery Claims* case, it's 2023 WL 4563221, at 11,  
13 (D.N.J. January 19, 2023), the court was dealing with whether  
14 assignors had any obligations, discovery obligations, and how  
15 that would work in an assignment context.

16 And the Court said that: The assignee is on notice of  
17 its obligation to provide assignor discovery as if those  
18 assignors were individual litigants in the lawsuit. The  
19 assignors, in turn, having benefitted from transferring their  
20 claims to MSP, the assignee, bear responsibility in cooperating  
21 with this litigation.

22 So the idea that --

23 THE COURT: I mean, it just seems obvious to me,  
24 regardless of that analysis, that anybody who has knowledge  
25 about the facts of a case are subject to discovery --

1 MR. CHEIFETZ: But it's not as a third --

2 THE COURT: -- whether they're assignors or not.

3 MR. CHEIFETZ: We're not talking about third-party  
4 witnesses here.

5 The reason I'm pointing this out is because the courts  
6 treat assignors as if they were parties to the case, because  
7 discovery from parties is different than from --

8 THE COURT: Are they subject to having to answer  
9 interrogatories, as opposed to being deposed and producing  
10 documents?

11 MR. CHEIFETZ: Yes, we would submit that --

12 THE COURT: They are? Is there a case that says  
13 that?

14 MR. CHEIFETZ: Well, I'm not aware specifically with  
15 respect to interrogatories, but I'm saying --

16 THE COURT: Well, only parties have to answer  
17 interrogatories, correct?

18 MR. CHEIFETZ: Correct.

19 THE COURT: So --

20 MR. CHEIFETZ: I'm not sure if there's a case  
21 specifically addressing interrogatories one way or the other,  
22 but I cited --

23 THE COURT: Well, it just seems obvious that an  
24 assignor would have to give discovery. That's not a surprising  
25 proposition.

1 In that New Jersey case, was the assignor saying he or  
2 she didn't have to give discovery?

3 MR. CHEIFETZ: Yes, the assignee was resisting having  
4 to provide discovery that they couldn't obtain --

5 THE COURT: Well, may have been resisting, but this  
6 seems so obvious to me that anybody who has any information,  
7 relevant information about a lawsuit, whether assignors or  
8 eyewitnesses or whatever, have to give discovery.

9 MR. CHEIFETZ: Fair enough.

10 THE COURT: And we all know in our practice that  
11 people sometimes resist discovery, parties resist discovery and  
12 non-parties resist discovery, and the courts have to get  
13 involved in dealing with that. I mean, people disregard  
14 subpoenas. That's part of life.

15 MR. CHEIFETZ: That's right. And that's fair.

16 All I was saying is, for example, you wouldn't need a  
17 third-party subpoena under that line of authority because the  
18 assignors would be treated as parties.

19 THE COURT: Well, is that what the court said, that  
20 the assignor didn't have to be subpoenaed?

21 MR. CHEIFETZ: That wasn't the issue in that  
22 particular case, but that's -- all I'm suggesting is the notion  
23 that the covered persons here are not involved, they're not  
24 participating in any way --

25 THE COURT: I don't think anybody can dispute that.

1 MR. CHEIFETZ: Right. And that's my point. And the  
2 Mississippi citizens, for example, who are anonymous --

3 THE COURT: I understand. And they're not going to be  
4 deposed.

5 MR. CHEIFETZ: More importantly, as we've said  
6 already, the covered persons retain a substantial legal and  
7 financial interest in the case. That makes this different.

8 If there had been an assignment for monetary  
9 consideration, as the Court suggested last time, then arguably,  
10 arguably then Atlas is the only one with the claim that  
11 matters. Right?

12 But that's not what happened here. And what happened  
13 here is that the covered persons are agreeing to these terms  
14 where they basically said you, Atlas, go and pursue my claims  
15 and I retain the lion's share of the legal and financial  
16 interest in those claims.

17 By any sort of common-sense understanding, the covered  
18 persons do still have claims here.

19 THE COURT: All right.

20 MR. CHEIFETZ: And again, I mentioned *Sprint*. It's  
21 important because if *Hood* is to be read as requiring this Court  
22 to determine there are multiple plaintiffs here, *Sprint*  
23 supports that because *Sprint* says that mass assignment is a  
24 form of multi-party joinder, multi-party joinder under  
25 Rule 20(a). It's analogous.

1           And if that's not enough, we also have a principle  
2     dating back over 120 years from the Supreme Court in the *Waite*  
3     decision and the line of authority that flows from *Waite*. And  
4     we identified this in our opposition brief at page 47 to 48,  
5     where the Supreme Court has treated a single mass assignee for  
6     collection as akin to multiple plaintiffs for jurisdictional  
7     purposes.

8           Now, what was going on in those cases? You had a  
9     single named mass assignee that came into court and said for  
10    diversity purposes, for amount in controversy, I can aggregate  
11    all of the small claims of my assignors.

12           THE COURT: But see, the Supreme Court, they may be  
13    plaintiff, but in *Hood* they talked about named plaintiffs,  
14    didn't they? They used the term "named plaintiffs."

15           MR. CHEIFETZ: They talked about named plaintiffs, but  
16    there was only one named plaintiff in *Waite*.

17           THE COURT: And that was the problem for purposes of  
18    mass action.

19           MR. CHEIFETZ: But in *Waite* the Supreme Court treated  
20    that one named plaintiff as multiple plaintiffs and it --

21           THE COURT: I understand treating them is different  
22    than naming them.

23           MR. CHEIFETZ: That's right.

24           THE COURT: That's the point --

25           MR. CHEIFETZ: I understand.

1 THE COURT: -- the Supreme Court talks about. So they  
2 may be treated as. But again, the Supreme Court in *Hood* said  
3 we're not talking about real parties in interest.

4 MR. CHEIFETZ: Neither am I.

5 THE COURT: So -- all right.

6 MR. CHEIFETZ: I'm talking about plaintiffs.

7 Again, the Court can obviously disagree with my  
8 interpretation of named plaintiffs. I don't think *Hood* can  
9 be limited that narrowly, which would elevate form over  
10 substance.

11 THE COURT: I think I understand your argument.

12 MR. CHEIFETZ: Can I make just one final point about  
13 *Waite*?

14 Because the important point is, in *Waite*, there had  
15 been a long line of authority, and the Supreme Court says that  
16 a single plaintiff can aggregate as many claims as that single  
17 plaintiff wants. And if one single mass assignee would be  
18 treated as a single plaintiff by the Supreme Court, it could  
19 have just adopted that longstanding authority and let that mass  
20 assignee aggregate as many claims as he wanted, but the Supreme  
21 Court didn't do that. It didn't do that because it would have  
22 been to contravene an important congressional statute with  
23 respect to jurisdiction if a mass assignee could avoid the  
24 requirements not in controversy by aggregating.

25 So what rule did the Supreme Court apply in



1    *Waite* and other cases? It applied the rule that multiple  
2    plaintiffs cannot aggregate claims to meet jurisdictional  
3    requirements.

4           Now, it's a different situation, it was an attempt to  
5    get into federal court, but the logic that the Supreme Court  
6    has applied for 125 years is the same here, is the same,  
7    because if you allow Atlas to be treated as only one assignee  
8    named plaintiff because it named only itself, it would elevate  
9    form over substance in the way that the Supreme Court rejected  
10   for 120 years in *Waite* because in reality Atlas stands in the  
11   shoes of 19,000 people who are aggregating their claims in a  
12   single lawsuit, and that's what CAFA mass action jurisdiction  
13   is intended to allow.

14           THE COURT: All right.

15           MR. CHEIFETZ: Can I just address --

16           THE COURT: Go ahead.

17           MR. CHEIFETZ: -- if I may, the cases that plaintiffs  
18   have said demonstrate that you should not extend *Hood's* holding  
19   beyond the *parens patriae*?

20           THE COURT: You may.

21           MR. CHEIFETZ: Thank you. I appreciate that.

22           The plaintiffs say that the Ninth Circuit in the  
23   *Liberty Mutual* case shows how courts will extend outside the  
24   *parens patriae* context. As counsel said, that was an insurance  
25   subrogation case.

1 THE COURT: Right.

2 MR. CHEIFETZ: That matters. That's an important  
3 fact. It shows why these cases are different.

4 In the insurance subrogation context, an insurance  
5 company pays out its insured, it has a contractual obligation.

6 THE COURT: Right.

7 MR. CHEIFETZ: It then --

8 THE COURT: And sues the tortfeasor.

9 MR. CHEIFETZ: And by operation of law, it gets a  
10 subrogation right and it goes and sues the tortfeasor. That's  
11 the insurance company's claim.

12 The insurance had no claim anymore --

13 THE COURT: They've been paid.

14 MR. CHEIFETZ: They've been paid. And the court in  
15 *Liberty Mutual* said that in that case the insurance had no  
16 ongoing financial or legal interest in the claim anymore.  
17 That's an important distinction that does not apply here.

18 The other case, as counsel said, was a case  
19 involving a derivative suit. Derivative suit where the theory  
20 in that case was you should consider the beneficial equity  
21 holders of the company as named parties or additional  
22 parties.

23 Now, a derivative suit is on behalf of the company,  
24 it's only one party with a claim. The equity holders don't  
25 have claims. Again, a very different and distinguishable line

1 of authority.

2 So I would just say, Your Honor, with respect to  
3 extending *Hood* beyond its facts, that those cases don't stand  
4 for the broader proposition, they had nothing to do with mass  
5 assignments, that the reasoning in *Hood* should be extended that  
6 far to contravene what the Supreme Court said in *Sprint* about  
7 mass assignments, in *Waite* about mass assignments, and  
8 elevating form over substance in *Knowles* with respect to CAFA  
9 jurisdiction.

10 And just lastly, Your Honor, the Third Circuit has  
11 observed something I think that's important, and that is  
12 that -- this is in the *Robert Mabe* case, which came after *Hood*  
13 -- that on occasion plain and unambiguous language ends up  
14 stating what was not Congress's intent, and in those instances  
15 we are obligated to construe statutes sensibly and avoid  
16 constructions which yield absurd and unjust results.

17 And the Third Circuit in *Mabe* cited to Supreme Court  
18 authority which made a similar point, and I just want to read  
19 it to the Court because I think it's important here.

20 The Supreme Court in the *United States vs. American*  
21 *Trucking* case, that the Third Circuit cites said: Even when  
22 the plain meaning did not produce absurd results but merely an  
23 unreasonable one plainly at variance with the policy of the  
24 legislation as a whole, this court, the Supreme Court, has  
25 followed that purpose rather than the literal words.

1           And again, elevating *Hood* or reducing *Hood* to the  
2   overly-simplistic proposition that the Court must only look at  
3   the named plaintiffs overlooks the entire context of *Hood*, the  
4   critical factual differences between proceeding by mass  
5   assignments in parens patriae litigation, and it would elevate  
6   form over substance exactly in the manner that the Supreme  
7   Court rejected ten months prior to *Hood*.

8           Thank you, Your Honor.

9           THE COURT: All right. Thank you.

10          All right. We'll hear about 1332(d) and class  
11   actions. Good morning.

12          MS. HUTCHINS: Good morning, Your Honor.

13          May I please the Court, my name is Sarah Hutchins and  
14   I represent Blackbaud, B-L-A-C-K-B-A-U-D, and a number of other  
15   defendants that have moved on the alternative theory of class  
16   CAFA action.

17          THE COURT: Right.

18          MS. HUTCHINS: Just for the record, we join in the  
19   consolidated brief that plaintiffs should be subject to federal  
20   jurisdiction because Atlas is not a real party in interest and  
21   because there's mass action under CAFA, but we offer this  
22   alternative argument.

23          Now, at the outset -- and I don't concede that any of  
24   the class elements have actually been met. But at a bird's-eye  
25   view of this case, it strikes as a class action.

1           What we have here, if, in the Court's view, the  
2 assignor covered persons are not parties with claims appearing  
3 in this matter, then what we have is one party under a new law  
4 and pursuant to a statutory assignment clause standing before  
5 this Court ostensibly on its own behalf and on behalf of 20,000  
6 others who are not before this Court but seeking injunctive  
7 relief and other relief both on Atlas's behalf and on these  
8 absent 20,000 individuals' behalf.

9           And when you look closer, when you look to see if all  
10 of the elements of CAFA removal are met and you strip away the  
11 artifice like *Erie II* instructs, then what we are looking at  
12 here in detail is a class action in disguise.

13           Now, I'll address this more when I talk about Daniel's  
14 Law, but I do want to dispute --

15           THE COURT: Well, the statute -- the cases certainly  
16 haven't been brought under a New Jersey class action relief,  
17 you would agree with that?

18           MS. HUTCHINS: I would not, Your Honor, actually. And  
19 I don't think that --

20           THE COURT: Not under the New Jersey class action  
21 rule?

22           MS. HUTCHINS: Not expressly.

23           THE COURT: No.

24           MS. HUTCHINS: But many cases, as cited in our brief,  
25 confined that a class action in disguise is brought under

1 Rule 23 analogue even when it's omitted, because to hold  
2 otherwise would allow a plaintiff to do what Atlas attempts to  
3 do here in avoiding class action jurisdiction, essentially to  
4 leave it out, and then the benefits of class action removal to  
5 both the covered persons in this case that have assigned their  
6 case to Atlas and the due process protections that would go to  
7 defendant are in jeopardy.

8 But it's not what Mr. Shaw characterized as any  
9 assignment of any contract or any statute is going to make it a  
10 class action. What we are arguing here is whether there's a  
11 class action in disguise brought under a statute or rule,  
12 expressly or wrongly omitted from the complaint itself, that  
13 allows a litigant to represent the rights of themselves and the  
14 rights of others.

15 THE COURT: Well, you'd have to meet, of course, the  
16 standards under the class action rule, even if the class action  
17 rule is not identified, correct?

18 MS. HUTCHINS: That's absolutely true, Your Honor.

19 THE COURT: You would have to show numerosity. And  
20 there are a lot of people here, thousands.

21 But what about the issue of commonality and  
22 typicality? Isn't that going to depend on the standard of  
23 liability if the standard is -- if Daniel's Law is a no-fault  
24 statute, that's one thing.

25 Let's assume for the moment that plaintiffs are going

1 to have to prove negligence on the part of your client and the  
2 other defendants. Doesn't that eliminate class action status  
3 because you're not going to have typicality, you're not going  
4 to have commonality?

5 Each -- you'd have to prove the negligence of each  
6 defendant. That would remove it from class action status right  
7 away, wouldn't it?

8 MS. HUTCHINS: Your Honor, I disagree.

9 THE COURT: Why?

10 MS. HUTCHINS: That goes to the liability of each  
11 individual defendant in each of their cases, but not whether  
12 the class members themselves, along with Atlas as the assignee,  
13 hold typical claims. And not every factual legal --

14 THE COURT: Yeah, but if that's the heart of it, you  
15 know, was your client negligent. Did they not remove the names  
16 because a hurricane moved through the town where you're  
17 headquartered and you weren't able to deal with it? Or  
18 somebody else had a fire? Or the computer system was jammed so  
19 that you couldn't remove the names?

20 I mean, it's going to -- isn't it going to be  
21 fact-based with respect to these 75 or 40 cases, whatever the  
22 number is, so that would certainly undermine the class action  
23 status.

24 MS. HUTCHINS: Your Honor, I again disagree. I think  
25 you look at each complaint and whether a class action in

1 disguise appears. And there's a potential class of  
2 individuals -- or whoever the class ends up being defined at a  
3 later stage -- as to each independent complaint and whether or  
4 not a negligence status is read in to --

5 THE COURT: So you would say that you're going to  
6 have -- here we have not one class, but we have 75 different  
7 classes?

8 MS. HUTCHINS: That's correct. And it might be  
9 combined in a multi-district litigation. That's not -- that  
10 structure in and of itself is uncommon. What is uncommon is  
11 the way that the plaintiff here today attempts to represent the  
12 claims of themselves and 20,000 others without the protections  
13 to the class members that are set forth in Rule 23 and the due  
14 process protections to the defendants.

15 And it's very clear that Atlas considers itself as  
16 representing themselves and these other individuals. The  
17 assignments are expressly authorized by Daniel's Law as a  
18 mechanism to enforce a covered person's rights. That's what  
19 they say in their brief.

20 With this lawsuit, Atlas attempts to enforce  
21 compliance with Daniel's Law for those covered persons, for  
22 others.

23 "We are taking action as Atlas." This is Mr. Atkins'  
24 deposition.

25 "And we are attempting to prosecute them all to



1 achieve compliance and a just outcome for the folks involved."

2 All of those strike as the hallmark of proceeding  
3 before this Court, this is how Atlas gets here as a  
4 representative of themselves and others.

5 The plaintiffs cite to *Erie* in their briefing as  
6 barring this, and we believe that the reliance on *Erie* and the  
7 way that it's characterized by the plaintiffs is overstated  
8 and, frankly, misapplied.

9 The plaintiffs imply that *Erie I* and *II* imply that a  
10 factual review is sufficient, that this Court need only look to  
11 whether the plaintiffs filed this action under a New Jersey  
12 statute or rule of procedure analogous to Rule 23. They did  
13 not. The inquiry ends there. That is not what *Erie* says.

14 *Erie II*, in fact, warns against such a myopic focus on  
15 forum. It says if a complaint does not satisfied the  
16 jurisdictional requirements on its face, then you must cut  
17 through the artifice to identify whether the case is in  
18 substance, in substance, whether the conglomeration of 20,000  
19 individuals not before Your Honor in substance is an interstate  
20 class action.

21 So the application can be distinguished --

22 THE COURT: So would notice have to be given to all of  
23 these individuals?

24 MS. HUTCHINS: Yes, Your Honor. And notice  
25 is inherent in the Daniel's Law statute. Or if under *Erie* the

1 Court finds that this case has been brought under  
2 New Jersey's class action statute, notice is inherent in either  
3 instance.

4 THE COURT: Which rules would I have to follow, the  
5 New Jersey rules or the federal rules for class action?

6 MS. HUTCHINS: For whether there's a state  
7 analogue?

8 THE COURT: When you say it's a class action, do I  
9 follow the federal rules on class actions, Rule 23, or do I  
10 have to follow the state rule?

11 MS. HUTCHINS: Well, Your Honor, I think in either  
12 instance Rule 23 affords latitude to Your Honor to make the  
13 appropriate protections in place, specifically to Your Honor's  
14 point on notice, as to class notice, and I think that would be  
15 under the Federal Rule 23.

16 But in either instance, notice can be accomplished  
17 both in the statute -- in looking for an analogue under  
18 New Jersey's class action statute or under Rule 23 to  
19 remove it to federal court for jurisdictional purposes and  
20 treat these lawsuits, these unusually filed lawsuits as a class  
21 action.

22 Again, looking back to *Erie*, *Erie* is different. The  
23 parties are different. The plaintiffs attempt to say that *Erie*  
24 says you must specify in writing the rule or statute that you  
25 are proceeding under that is representative in nature, but *Erie*

1 does not go that far.

2 In fact, the *Erie* court did what we're asking Your  
3 Honor to do here today, which is they looked beyond the  
4 complaint to see what the representative statutes could be.

5 So both -- an exchange in *Erie*, the court was bound by  
6 the fact that an association is properly understood as a suit  
7 by one entity in that instance, not by a conglomeration of  
8 individuals. They were bound by the *Long* decision in that case  
9 that found that specific as far as how an association can be  
10 viewed under Pennsylvania law.

11 The court noted specifically in *Erie I* that an  
12 exchange was not a stand-in for its subscribers by statute. An  
13 exchange was essentially its own legitimate entity, single  
14 entity, suing its managing agent and its attorney-in-fact on  
15 one single legitimate issue. And that's unlike here where we  
16 would say -- and I think it's clear to the Court -- that Atlas,  
17 with respect to the class action argument, is standing in the  
18 shoes of other, especially in seeking the injunctive relief  
19 that 100 percent flows to the covered persons.

20 In *Erie I* the court also noted that a legal  
21 association of the members and the exchange existed independent  
22 of the suit and that all of the relief in *Erie* flowed to the  
23 exchange, which as we've discussed multiple times today, Your  
24 Honor, that's not the case.

25 The second distinguishing factor of the *Erie* cases is

1 that the courts were limited, *Erie* courts were limited because  
2 the exchange could only sue, could only get to court as an  
3 association under Pennsylvania law. Again, that's not what we  
4 have here today.

5 The suit was focused on Pennsylvania's procedural  
6 statute of 2152 because that's the only way that the *Erie*  
7 exchange could get into court. The court attempted and looked  
8 beyond the pleadings. They did a factual analysis to see if  
9 there another representative statute that *Erie* could be  
10 proceeding under, and they said no.

11 They looked specifically at Pennsylvania Civil  
12 Procedure Statute 17 -- Rule 1702. But because *Erie* was an  
13 exchange and dealt with an exchange, it could not be proceeding  
14 under that statute. It had to be proceeding under 2152. And  
15 the court was bound by prior Pennsylvania law that had  
16 forbidden suit by an unincorporated association to be  
17 maintained as a class action. They had no other avenue, no  
18 representative statute to look at but 2152. And they did the  
19 analysis specific to that statute and found it was not an  
20 analogue. But that statute is very different from New  
21 Jersey's class action statute or Daniel's Law, as we see here  
22 today.

23 *Erie II* instructs us to look behind the pleading  
24 artifice, to look beyond it and not let a plaintiff rest  
25 inappropriately on an omission. And I proffer that if *Erie* had

1 come out differently, it would come out differently if it was  
2 an individual bringing a suit against the indemnity in that  
3 circumstance in some other issue, and it was silent as to how  
4 it got there, but it presented itself as representing the  
5 interest of others.

6 The court demonstrates that it would have looked at  
7 Pennsylvania Rule 1702 to find potentially a class action if  
8 the other elements of a class action in disguise presented  
9 themselves.

10 THE COURT: All right.

11 MS. HUTCHINS: So this presents here a class action in  
12 disguise within *Erie*'s holding for purposes of jurisdictional  
13 review. First, when looking at the Rule 23 analogue, which is  
14 the only -- it's notable that it's the only element the  
15 plaintiffs have said is missing here, and they have -- they are  
16 the ones that decidedly and expressly set forth the -- or  
17 decided what to write down in their complaint, and they decided  
18 to omit a Rule 23 analogue --

19 THE COURT: First of all, the plaintiff is the master  
20 of his or her complaint.

21 MS. HUTCHINS: It is. But CAFA provides that a class  
22 action in disguise can be found when they are omitting the  
23 representative nature and rule or statute that they proceed  
24 under. It's not dependent on what they put in writing but how  
25 the case presents itself, whether --

1 THE COURT: That requires me to look at the  
2 assignments. If they're total assignments, they're not  
3 representing anybody, they're representing themselves.

4 MS. HUTCHINS: Your Honor, I don't think you need to  
5 look at the assignments. You can look at, as I stated, under  
6 New Jersey's class action statute or you can look under  
7 Daniel's Law where the injunctive relief inherently flows to  
8 the assignors. The New Jersey legislature could not have  
9 intended otherwise, because to do that would mean that an  
10 assignee would potentially settle and not seek injunctive  
11 relief, not seek the entire purpose, stated purpose of New  
12 Jersey's Daniel's Law, which is to effectuate a takedown,  
13 or they could simply not pursue it at all, have claims  
14 assigned to them that decide not to pursue the injunctive  
15 relief aspect.

16 The New Jersey legislature could not have intended  
17 that with respect to Daniel's Law. The injunctive relief would  
18 continue to flow to the covered persons.

19 We don't concede any of the elements of Rule 23 are  
20 satisfied, but I think it's particularly notable that the --

21 THE COURT: They are not satisfied?

22 MS. HUTCHINS: That they're not satisfied to establish  
23 a class. But for purposes of the jurisdictional discussion  
24 that we're having here today, the case itself presents the  
25 frameworks that's appropriate for us to consider that this is

1 jurisdiction that should be in federal court.

2 And I -- the plaintiff shows that they need this to be  
3 a complaint in substance in their brief at page 22. They state  
4 that while plaintiffs can just as easily proceed as a class  
5 action or a mass action, especially given the breadth of  
6 assignments from the covered persons, plaintiffs are  
7 merely carrying out what the state allowed, lawsuits by  
8 assignment.

9 And that's exactly what the legislature intended to  
10 avoid with the broad application of CAFA where it does not  
11 require a rule but finds that it is preferable to have  
12 interstate class actions heard in federal court for the  
13 protections that are afforded to the members in --

14 THE COURT: Do you think the legislature was even  
15 thinking about the issue of class actions when they passed this  
16 statute?

17 MS. HUTCHINS: I am sorry, the --

18 THE COURT: Do you think the legislature was thinking  
19 about class actions when it passed this statute?

20 MS. HUTCHINS: When it passed Daniel's Law?

21 THE COURT: Yes.

22 MS. HUTCHINS: Well, I think that they were thinking  
23 about protections for covered persons. And when --

24 THE COURT: Right.

25 MS. HUTCHINS: And when the assignment clause was

1 added to afford -- some of the elements that we think about  
2 when we think about the benefits of the numerosity analysis  
3 and -- which is to allow -- where joinder is impractical, to  
4 allow those that are not inclined to appear in federal court to  
5 assign their claims to others, then yes, it could be viewed  
6 that way.

7 But I also don't think CAFA is viewed that narrowly as  
8 what did the state legislatures intend when they wrote a  
9 particular representative statute. It's whether it's a class  
10 action in disguise, whether the interest of others are being  
11 represented by a litigant, and those others are not before the  
12 Court.

13 THE COURT: All right.

14 MS. HUTCHINS: The tactical refusal to cite an  
15 analogue should not be permitted, and there's many cases in our  
16 brief that address this. To hold otherwise would prioritize a  
17 complaint's use of magic words or not. And in large part, the  
18 plaintiffs did not address many of those cases.

19 To the extent, though, that -- the cases I would say,  
20 Your Honor, make the specific point that you cut through the  
21 artifice, you can find a class action, and whether or not the  
22 rule is specifically memorialized in the complaint, despite the  
23 fact that the plaintiffs are the masters of the complaint, is  
24 not enough to disavow the legislature's protections when  
25 they enacted CAFA, to push these types of cases to federal



1 court.

2 But to the extent that a rule needs to be read, that  
3 appearing within the four walls of the complaint, then I  
4 believe that Daniel's Law can satisfy that analysis, though I  
5 don't think that's what *Erie* requires.

6 As I said before, Mr. Shaw -- I don't even know if  
7 it's overly simplified, but essentially misstated what we argue  
8 in our brief, that any clause, contract, any law, any statute,  
9 anything could be characterized as a class action merely if  
10 there's an assignment involved.

11 That is not at all what we're saying. We're saying  
12 that this case, that's very uniquely presented to this Court,  
13 all of these cases, presents just the circumstance where CAFA  
14 was put into place to protect those litigants and the  
15 defendants in this case for their due process protections, and  
16 that is whether the statute has those hallmarks of typicality,  
17 commonality, adequacy, and whether it's presented in an action  
18 in substance that's a class action in disguise.

19 And we think Your Honor can find that, again,  
20 under New Jersey's class action statute, but also under  
21 Daniel's Law.

22 When --

23 THE COURT: Go ahead.

24 MS. HUTCHINS: When looking at whether a law can  
25 satisfy that analogue analysis, the governing principle is

1 whether the state law at a minimum provides a procedure by  
2 which a member of a class whose claim is typical of all members  
3 of the class can bring an action not only on their behalf but  
4 also on behalf of others.

5 And the *Falcon* case tells us that you can merge and  
6 you should merge the criteria of commonality, typicality, and  
7 adequacy, and they're merged here in that assignment clause  
8 that we've been discussing.

9 Daniel's Law contains sufficient representative  
10 structure through that assignment clause because it allows a  
11 proper assignee, which again, we do not concede, but for  
12 purposes of jurisdiction the hallmarks are present, it allows  
13 the proffer assignee to sue on its own behalf and on behalf of  
14 others.

15 The class members retain an interest like we just  
16 talked about --

17 THE COURT: I think we're going to have to give the  
18 court reporter a break. She's been working very hard and we've  
19 been at it over an hour and a half.

20 So you can finish when we -- ten minutes.

21 MS. HUTCHINS: Yes, Your Honor.

22 THE COURTROOM DEPUTY: All rise.

23 (Brief recess taken from 11:36 a.m. to 11:46 a.m.)

24 THE COURT: All right. Ms. Hutchins, you may proceed.

25 MS. HUTCHINS: Thank you, Your Honor. I'm almost done

1 and I'm happy to answer any --

2 THE COURT: I'm sorry to interrupt, but I know the  
3 court reporter needed a break.

4 MS. HUTCHINS: I benefitted from it too. The argument  
5 got shorter. I'm happy to address any questions of Daniel's  
6 Law as to Rule 23 analogue but --

7 THE COURT: Well, you see, Daniel's Law  
8 doesn't require numerosity. In other words, if you're using --  
9 one person can bring a lawsuit under Daniel's Law or five or  
10 ten. Let's say here that Atlas had only brought a suit -- I  
11 use the words "on behalf of." Those words are not used  
12 in the complaint -- ten assignors. Would that be a class  
13 action?

14 MS. HUTCHINS: No, Your Honor. If there's -- if I  
15 understand Your Honor's question correctly, if Atlas proceeds  
16 as the assignee of one assignor, that's not presenting itself  
17 as a class action, that's --

18 THE COURT: Well, let's say it was ten.

19 MS. HUTCHINS: And likewise. We look at the analysis  
20 of when CAFA would apply when you reach numerosity --

21 THE COURT: Right.

22 MS. HUTCHINS: -- just as you would in any other  
23 instance.

24 THE COURT: But Daniel's Law doesn't require  
25 numerosity.

1 MS. HUTCHINS: And CAFA doesn't say that it needs to  
2 have it. There's the *Exxon* case specifically talks about how  
3 you don't need every element -- I am sorry, that CAFA doesn't  
4 disclose the criteria of what a rule analogue is. And many  
5 other cases, including the *Purdue* case we cite, says that the  
6 analogue doesn't need to have all of the conditions of Rule 23.  
7 And the most important ones are the ones that we talked about  
8 already, which are the adequacy, technicality, and commonalty  
9 element that is present in the assignment clause.

10 But as I mentioned earlier, aspects of the amendment  
11 to add the assignment clause have hallmarks of that numerosity  
12 analysis, including the impossibility of enjoining all of the  
13 individuals. They covered persons in this case that wanted to  
14 exercise takedown rights and assign their claims to Atlas and  
15 may not want to appear in a federal litigation. And the way  
16 that this case presents itself satisfies that other  
17 consideration of numerosity.

18 Your Honor, I want to end with addressing one last  
19 point, which are the consequences in this case, especially to  
20 the assignors, of not finding a mass or class action under CAFA  
21 in this instance.

22 Again, as we've all stated, this is a unique  
23 presentation and the covered persons are not -- may not be  
24 viewed as being here to represent their interests, but  
25 certainly they still have them. And without CAFA, mass or

1 class, the protection to the class members that would be  
2 present in the event of the class action, be it under Federal  
3 Rule 23 or Your Honor's orders with respect to additional  
4 notice requirements, those are not present.

5 And I think that's particularly notable here where on  
6 page 29 of the plaintiffs' brief they noted themselves to not  
7 be bound, to not be bound as the class representative, to not  
8 have any of the responsibilities to those covered persons.  
9 They act unbound without rules. And that's exactly the  
10 reason that the legislature enacted CAFA, to protect  
11 not-present parties and their interest, to ensure that, for in  
12 this case --

13 THE COURT: Isn't that true in any case where there's  
14 an assignor and an assignee?

15 MS. HUTCHINS: I am sorry. Say that again, Your  
16 Honor.

17 THE COURT: Same situation. Wherever an assignor  
18 makes an assignment to an assignee, you -- if it's an absolute  
19 assignment, you give up your rights.

20 MS. HUTCHINS: But that is not the case here and  
21 Daniel's Law --

22 THE COURT: And if there's a breach of the agreement,  
23 then one can sue the other.

24 MS. HUTCHINS: A contractual assignment that may or  
25 may not have --

1 THE COURT: Aren't assignments all -- they're are  
2 contractual, aren't they, assignments?

3 MS. HUTCHINS: Not here. Daniel's Law has an  
4 assignment clause in the statute itself that contemplates the  
5 idea that someone else --

6 THE COURT: No, but it doesn't require an assignment,  
7 it just gives --

8 MS. HUTCHINS: It doesn't.

9 THE COURT: -- the parties the right to. Assignments  
10 are generally done under common law, but this is just a  
11 statutory right of assignment.

12 MS. HUTCHINS: It does. But when --

13 THE COURT: Because it's a little unusual in the sense  
14 that you're assigning a tort claim, I think. Because  
15 assignments are usually contractual claims that are assigned.

16 MS. HUTCHINS: Yeah. And --

17 THE COURT: So I don't know that absent a statute, you  
18 can assign your -- if I'm injured in an automobile accident, I  
19 don't know that I can assign my claim to an assignee who pays  
20 me X dollars, and then the assignee goes out and tries to  
21 collect more. I don't think you can, generally you can do  
22 that.

23 MS. HUTCHINS: Your Honor, we agree --

24 THE COURT: But the statute here permits it, so that's  
25 a different thing.

1 MS. HUTCHINS: This is a unique circumstance, exactly  
2 the type of situation because of the presentation that is  
3 brought here today and because the -- especially with respect  
4 to the injunctive rights, those rights belong a hundred percent  
5 to those covered persons.

6 THE COURT: Right.

7 MS. HUTCHINS: That presents a unique analysis that  
8 CAFA was expressly and our legislature expressly intended to  
9 have those protections for those non-members.

10 Thank you, Your Honor.

11 THE COURT: Thank you very much.

12 Before we hear from the plaintiffs, we need to hear  
13 from the lawyers who are alleging fraudulent joinder.

14 Good morning.

15 MR. PRATT: Good morning, Your Honor, Marcel Pratt  
16 from Ballard Spahr on behalf of the four Thomson Reuters  
17 defendants in case 24-4269. And I will be addressing the  
18 fraudulent joinder argument as it relates to the Thomson  
19 Reuters defendants.

20 This case against Thomson Reuters relates to  
21 two non-public subscription-only products that are owned,  
22 operated, and sold by Thomson Reuters entities that are not  
23 parties to this case. And what Atlas has done here is they've  
24 brought claims arbitrarily against two entities that are  
25 Canadian citizens and two non-diverse entities that are

1 citizens of Delaware, which has the effect of destroying  
2 diversity.

3 And we contend that the joinder in naming of those two  
4 non-diversity entities is fraudulent because they have no  
5 connection to this controversy. And it's well settled in the  
6 Third Circuit -- Your Honor mentioned that *Batoff* case earlier,  
7 that joinder is fraudulent where there's no reasonable basis in  
8 fact or colorable ground supporting the claim against a joined  
9 defendant. And here --

10 THE COURT: Right. But you have to look at the  
11 complaint, what do they say about these non-diverse defendants?  
12 And there's a declaration. I don't remember whether it's in  
13 your case it's an affidavit or declaration, but in any event,  
14 the same thing for present purposes, saying that in effect they  
15 had -- there's no connection with -- they've never done any of  
16 this.

17 MR. PRATT: Correct. Right.

18 So that's what -- we did submit a declaration. But  
19 you're right, Your Honor, we can start with the complaint  
20 because the complaint against Thomson Reuters has no specific  
21 allegations against the two non-diverse entities. It's just  
22 boilerplate language that's used against all the defendants,  
23 including the ones more generally in the litigation, but there  
24 are no specific allegations as it relates to the two  
25 non-diverse entities.



1           And in response to that, we filed our notice of  
2 removal, which does attach an affidavit, and we explained to  
3 Atlas that the website identified in your complaint is not  
4 owned or operated or maintained by the two entities that  
5 you've named, the Delaware citizens, and the email address  
6 to which you sent the takedown notices is not owned,  
7 operated, or maintained by the two entities that are Delaware  
8 citizens.

9           And in response to that, they filed their motion for  
10 remand and they didn't address that at all. They essentially  
11 gave us a two-sentence footnote where they didn't confront the  
12 facts and they said collusive joinder and fraudulent joinder  
13 are the same thing, and that's all they said.

14           And I think Your Honor pointed out earlier that Atlas  
15 could have engaged in discovery, but they made a deliberate  
16 choice not to.

17           THE COURT: And of course, with the fraudulent  
18 joinder, I don't think motive or purpose is relevant. The  
19 question is whether there's a colorable claim.

20           MR. PRATT: Correct, yeah. Motive is not -- we're not  
21 saying that there had to be motive.

22           THE COURT: And the question is, am I limited  
23 solely to the complaint in making that determination or may I  
24 take into consideration an affidavit or a declaration that's  
25 filed?

1 And we all have to recognize it's not a 12(b)(6)  
2 motion.

3 MR. PRATT: Correct.

4 THE COURT: It has to go far beyond that. It has to  
5 be totally without substance, frivolous, are different words  
6 that are used, but it's not just do they state a claim for  
7 relief.

8 MR. PRATT: That is absolutely correct, Your Honor.  
9 And you can rely on affidavits, and I know in other cases that  
10 we've cited Your Honor has relied on affidavits in conducting a  
11 fraudulent joinder analysis.

12 And Your Honor can look to information outside of the  
13 complaint for indicia of fraudulent joinder. And that's in the  
14 cases that we cite.

15 But like I said, it's very telling that in the motion  
16 for remand the fraudulent joinder argument was addressed in a  
17 simple footnote without confronting any of the evidence. And  
18 so in our opposition, what we did is we provided additional  
19 information that said these two entities have no connection to  
20 the controversy and, by the way, they don't even have the legal  
21 authority or ability to remove the information from these  
22 products.

23 And then we took it a step further and said there's  
24 publicly-available information that shows you which entities  
25 are actually connected here. There's publicly-available

1 information that shows which entities own, operate, and sell  
2 the products, and there's also information that shows which  
3 entities, you know, own and operate the email address to which  
4 you've sent the takedown notices.

5           And in response to that, we have Atlas's reply  
6 which, again, doesn't confront the evidence. What they did  
7 was say we're asking the Court to conduct a merits analysis,  
8 which we're not, and then they respond with two pages of  
9 string cites. Right? But, again, they fail to engage on the  
10 evidence. And I think there's no greater indicia of  
11 fraudulent joinder than just a simple failure to engage with  
12 the facts.

13           And also, Your Honor, I heard counsel for Atlas  
14 earlier say that there was some website they saw that connected  
15 the fraudulently joined defendants to the case. My response to  
16 that is, what website? Because it's not cited in the  
17 complaint, it's not anywhere in the record, and that's because  
18 it doesn't exist.

19           And so, Your Honor, where we are with this is we have  
20 evidence via the declarations that we submitted, they're  
21 un rebutted and uncontested. Atlas has had three bites at the  
22 apple. They've had the complaint, the motion for remand, and  
23 the reply, and they've engaged with the facts not at all; they  
24 also had the opportunity to take discovery and they didn't; and  
25 then today, if we want to consider that the fourth bite at the

1 apple, what they did was refer to a website that is not on the  
2 record and doesn't exist.

3 THE COURT: All right.

4 MR. PRATT: Thank you, Your Honor.

5 THE COURT: Thank you.

6 Anyone else?

7 MR. DOMINO: Good morning, Your Honor. Tyler Domino  
8 for MyHeritage defendants in case 24-cv-4392.

9 THE COURT: Yes.

10 MR. DOMINO: I won't take too much of your time, he  
11 just argued most of what I was going to say, but I want to  
12 focus on my client specifically. There were two entities that  
13 were sued: MyHeritage Limited, which is an Israeli company;  
14 and MyHeritage USA Incorporated, which is --

15 THE COURT: In Delaware.

16 MR. DOMINO: Incorporated in Delaware, that's correct.

17 And as we said in the declaration, MyHeritage USA has  
18 nothing to do with the only allegations that are in the  
19 complaint.

20 The complaint is very specific that MyHeritage.com was  
21 disclosing names and addresses and potentially phone numbers,  
22 and that they sent takedown requests to privacy@MyHeritage.com,  
23 but MyHeritage USA has nothing to do with MyHeritage.com or  
24 privacy@MyHeritage.com. They were on a different website  
25 called Geni. And there's no allegations about Geni anywhere in

1 the complaint, which we put in our affidavit.

2 And Your Honor focused on a key issue, can we look at  
3 affidavits? And the answer to that is unequivocally yes. The  
4 Third Circuit in Bristo(PH) said you must look at evidence  
5 outside of the complaint. There's many district court cases  
6 looking at affidavits just like the ones we put in. We cite  
7 these at page 7 of our supplemental brief.

8 And the affidavits look just like the ones here, which  
9 say we don't have a connection with this lawsuit and so,  
10 therefore, we're fraudulently joined.

11 What the plaintiffs say in response is, you know,  
12 there's lots of ways to disclose addresses and we're trying to  
13 narrow Daniel's Law only to people that own certain websites,  
14 but they're actually one step ahead. We're one step behind  
15 that.

16 All of those activities of disclosure are only illegal  
17 under Daniel's Law if you first receive a takedown notice or  
18 sent one and receive one. Disclosing names and addresses is  
19 perfectly legal on its own. You have to receive a takedown  
20 notice.

21 And so because MyHeritage USA does not operate or have  
22 any control over or anything to do with the only email address  
23 they allege in the complaint that was sent takedown requests,  
24 Daniel's Law just doesn't apply to them at all.

25 If Your Honor has any questions, I would be happy to

1 answer them.

2 THE COURT: Thank you very much.

3 Mr. Shaw, you may respond to everything that's been  
4 said for the last hour or more.

5 MR. SHAW: Thank you, Your Honor. Adam Shaw for the  
6 plaintiffs.

7 Do you mind if we go in reverse order, would that be  
8 okay?

9 THE COURT: Whatever order you would like to go in.

10 MR. SHAW: The affidavits that they submitted are  
11 quintessential fact issues. They want the Court to look at the  
12 affidavits to make a determination that they don't --

13 THE COURT: The Court's permitted to looked at  
14 affidavits in a fraudulent joinder matter, aren't we?

15 MR. SHAW: Not to the extent that they're asking for  
16 it.

17 THE COURT: What do you mean?

18 Well, I guess the question is whether or not the  
19 analysis would be a 12(b)(6) or whether or not based on the  
20 affidavits, the uncontradicted affidavits, the claim would be  
21 frivolous or not colorable, whatever words you want to use that  
22 the Third Circuit uses in *Batoff*.

23 So that's really what I have to decide; isn't that  
24 correct?

25 MR. SHAW: That is correct. And but I don't -- I

1 think if you followed what they're asking you to do, you would  
2 be making a determination they didn't violate Daniel's Law,  
3 which is the merits.

4 I do agree that you could look to see whether we added  
5 a party --

6 THE COURT: Well, if I found that were frivolous, I'm  
7 also deciding the law is not being violated.

8 I mean, that's --

9 MR. SHAW: True. But our allegations in the complaint  
10 didn't come from nowhere, that -- he's suggesting that we --  
11 they put in information about websites and who owns it or  
12 controls it.

13 THE COURT: The affidavits are, in effect, saying that  
14 and they're not contradicted.

15 MR. SHAW: Your Honor --

16 THE COURT: I mean, what if you sued the, as I said,  
17 the governor of New Jersey, the governor of Pennsylvania who --  
18 and the governor comes back and says I had nothing to do with  
19 these data brokers or websites?

20 MR. SHAW: True, but --

21 THE COURT: And you have no contradictory affidavit,  
22 wouldn't I have to say under those circumstances it was a  
23 frivolous claim?

24 MR. SHAW: I think if the hypothetical you're posing  
25 you have somebody who's so removed that the governor wasn't

1 part of, let's say, the prison system, some prisoners bringing  
2 some claim, it's just saying, you know --

3 THE COURT: Just because someone happens to be a  
4 subsidiary or have some affiliation doesn't necessarily make  
5 that affiliate liable under a lawsuit. It depends.

6 I mean, you can't say just because somebody's an  
7 affiliate of somebody, therefore, they're immune from a  
8 fraudulent joinder analysis, can you?

9 MR. SHAW: No. But if we allege that they  
10 participated, then, you know, that's what makes it not  
11 frivolous and it's an allegation that is plausible on its face.  
12 I mean, we didn't get the name from anywhere.

13 They're not saying that they're not in the affiliate  
14 realm, they're not saying that they had no connection at all to  
15 these websites. They're just saying they didn't own and  
16 operate them in a way that would make them liable under -- so  
17 that's our --

18 THE COURT: So what I would have to do is look in  
19 detail at -- compare the complaint, look at the exact  
20 allegations, and review in detail the affidavits and  
21 declarations to make that decision.

22 MR. SHAW: Yes, Your Honor, we appreciate --

23 THE COURT: See if it falls into the category of being  
24 frivolous or not colorable.

25 MR. SHAW: Exactly, Your Honor. We'd appreciate that.



1 And if you do it with that standard --

2 THE COURT: I understand what the analysis has to  
3 be.

4 MR. SHAW: With that standard in mind, exactly,  
5 because that's the standard.

6 And then moving on to the class action under CAFA. I  
7 think Your Honor asked the question that I was wondering in my  
8 own mind, which is, you know, what if we brought it for ten  
9 people?

10 I mean, what's the vehicle that's being used here to  
11 bring these cases, and the vehicle is -- it's Daniel's Law.  
12 It's a plenary action under Daniel's Law. Daniel's Law has  
13 none of the hallmarks of a class action. And that's what the  
14 CAFA statute asks Your Honor to look at, is are we using  
15 some vehicle, some mechanism that is essentially a class  
16 action?

17 You know, exactly, if we -- I think that they would  
18 agree with me that if somebody did not have an -- if an  
19 assignment was not given to Atlas, that that person's not part  
20 of the case.

21 So it seems to me that we're not representing anybody  
22 else in this courtroom who is not -- who hasn't given an  
23 assignment or an assignment hasn't been effectuated. We're not  
24 trying to represent absent parties in that sense, in the sense  
25 of a class action. We're not representative for people who we

1 don't have an assignment for.

2 So I don't think this looks like a class action in  
3 the way that the CAFA courts -- the CAFA statute's addressed  
4 to.

5 Then moving backwards to the mass action and really  
6 the *Hood* case, we understand why they don't want to apply *Hood*.  
7 *Hood* very specifically says you look to the language in the --  
8 *Hood* is interpreting the language of a statute and it's doing  
9 it very clearly.

10 They're trying to say that *Hood* is only limited to the  
11 parens patriae situations. They haven't put forth any case  
12 that suggests that it should be so limited. We've put some  
13 examples. He could criticize the examples, but at least  
14 they're examples where it was not in the situation of  
15 parens patriae. That's what we were trying to put before the  
16 Court.

17 But I also think if you look back at *Hood* and take a  
18 look at exactly what happened there, the -- I guess it was  
19 the defendant, not the state, tried to make the argument that  
20 the state could also fit in CAFA under this other statute  
21 where it's the general public. They tried to make the  
22 argument that the status of the state being a state makes it  
23 somehow different, makes this case somehow different under  
24 CAFA.

25 And I think the Supreme Court said, no, we don't

1 have to consider that, we don't have to consider that it's a  
2 parens patriae, that's not the distinguishing factor in this  
3 case; what we're doing here is interpreting the statute and  
4 the language of the statute, and inviting inquiries behind  
5 who the named plaintiff is, is not something that fits  
6 within the definitions and the intendment of this part of the  
7 statute.

8           The court said maybe you do that under collusion and  
9 under 1359, but you don't do it under this mass action  
10 provision.

11           So all of the other arguments that they're making  
12 about collective actions and things would require Your Honor to  
13 do some gymnastics to avoid *Hood* that we just don't think Your  
14 Honor should do or to take you there.

15           And then getting all the way back to the kind of  
16 collusion point and where this all started, I think Your Honor  
17 was -- I appreciate now when you asked about the first step in  
18 the analysis, about whether the assignment is real, whether  
19 Atlas can be in this court, because apparently that runs  
20 through all of these arguments. And I didn't appreciate  
21 that -- I thought that they were conceding that the assignments  
22 are real and valid, at least in the sense that Atlas has  
23 standing to be in this court, that Atlas has the ability to be  
24 in this court, and that all of the questions that they're  
25 trying to raise about who's the real party in interest were

1 kind of secondary.

2 But I do think now that that's a really important  
3 point. I don't think they could get around *Sprint*. I don't  
4 think they could get around the first step of the analysis,  
5 which is Atlas is the party that's here.

6 THE COURT: Well, they can always get around the first  
7 step because the first step is whether somebody's a real party  
8 in interest or standing, or however you want to characterize  
9 it.

10 But even if so, then you have to determine whether  
11 there's collusion. I mean, nobody said in the *Kramer* case that  
12 the assignee wasn't a real party in interest. I don't think  
13 the court went off on that. Even if you are a real party in  
14 interest, that's not the end of the game.

15 MR. SHAW: Exactly.

16 THE COURT: You have to meet the second step. Did you  
17 manufacture jurisdiction because you maybe are a real party in  
18 interest?

19 That isn't -- the fact that you're a real party in  
20 interest doesn't get you off the *Hood*.

21 MR. SHAW: Exactly. And that's why I didn't  
22 appreciate the steps until you raised it. But I think that's  
23 exactly right, they didn't raise it in *Kramer*, in *Grassi*, in  
24 *Attorneys Trust*. They didn't end the inquiry there and say the  
25 fact that this case involves assignment --

1 THE COURT: You must have been a real party in  
2 interest or you wouldn't have gotten to the second step, I  
3 would think.

4 MR. SHAW: Exactly. So Atlas is here, it is a real  
5 party in interest.

6 Then you have to say, what is the other -- is there  
7 some other aspect of it that you disregard that or you need to  
8 look to the covered people? And that's where they try to  
9 analogize this situation to *Grassi* and *Attorneys Trust* and  
10 such. This doesn't look like any of those cases.

11 I mean, considering *Grassi*, you had a plaintiff who  
12 had a cause of action against a foreign company. And then  
13 after it had this cause of action accrued, it wanted to bring a  
14 case and it assigned its interest then for the specific purpose  
15 of avoiding -- for adding a party for avoiding jurisdiction in  
16 federal court.

17 Both parties came into court. Both parties. The  
18 assignor and the assignee were both in court. The assignor  
19 controlled the litigation. The assignor was the one doing all  
20 the things. It added the assignee to try to avoid  
21 jurisdiction. And that's where the Court kind of went through  
22 the factors.

23 Same thing -- *Attorneys Trust* is kind of sui generis  
24 because it's a really weird case where the attorney had  
25 brought -- the same kind of facts where there was an assignment

1 after the cause of action had already accrued and they were  
2 trying to avoid federal court. But the strange thing about  
3 that case was the assignor and the assignee were both in the  
4 case. They're the ones who brought the counterclaim  
5 affirmatively. They said in their papers that they didn't have  
6 jurisdiction and diversity jurisdiction.

7 The case went all the way to the end. And then they  
8 lost, and then they said, oh, by the way, we shouldn't be here.  
9 And that's where the court kind of went through the facts. It  
10 just doesn't really look anything like this case.

11 So then if you look at exactly what this case looks  
12 like, clearly -- as we've said, the covered people do not  
13 control this litigation. Regardless of whether there's some  
14 monetary part that might flow back to them, they're not  
15 controlling the course of the litigation.

16 THE COURT: How about this whole issue of the  
17 injunction which has been raised?

18 In other words, there's an assignment, and if money is  
19 collected by Atlas, a certain amount of the money will be  
20 provided to the covered person.

21 Now, what about the injunctive aspect? In your  
22 complaint you not only ask for actual damages, punitive  
23 damages, but you also ask for injunctive relief. Isn't that a  
24 little different than monetary relief that does the -- does  
25 Atlas have any interest in obtaining injunctive -- let's assume

1 for the moment you collect money from a defendant, you give a  
2 certain amount of it back to the assignor pursuant to your  
3 agreement, and then the defendant continues to publish the  
4 names.

5 Does the assignee, Atlas, then have a right to go  
6 into court, or an obligation to go into court and get an  
7 injunction against the data broker for continuing to publish  
8 the names?

9 MR. SHAW: I would think that would be derivative of  
10 the initial claim but -- and I think even our complaint kind of  
11 makes the equitable relief kind of coincide with the monetary  
12 relief. I don't think they're necessarily different.

13 But kind of more fundamentally, is that really  
14 different than the assignor -- sorry, as the assignee in the  
15 *Long John Silver's* case? Right? This was a franchise company  
16 that had a bunch of franchisees that had their -- you know,  
17 arranged to have their roofs done in one uniform fashion, and  
18 then to bring the lawsuit --

19 THE COURT: Yeah, but in the *Long John* -- and I have  
20 read it -- I know they were asking for monetary relief against  
21 the people that were putting the roofs on the --

22 MR. SHAW: Well, they also wanted nice blue roofs in  
23 the end, and they were going to force them to do that. I think  
24 there was some injunctive relief aspect to it.

25 THE COURT: Was there an injunctive relief aspect?

1 I don't specifically remember, I must say, whether they were --

2 MR. SHAW: I hope I'm not overstating it, I just  
3 think that --

4 (Simultaneous speakers.)

5 THE COURT: What if you just want to get money to  
6 repair the roofs?

7 MR. SHAW: Well, they wanted the roofs -- and I also  
8 think they wanted the roofs repaired.

9 THE COURT: Right, but that's monetary. I don't think  
10 they wanted the people who did such a bad job to do the  
11 repairs. I think they wanted to get somebody else. So I don't  
12 know that that case involved an injunction.

13 So the question is here, how does the fact that you  
14 seek injunctive relief, does the assignor then have a right to  
15 seek injunctive relief on behalf of the covered person? In  
16 other words, do -- the assignee generally steps into the shoes  
17 of the assignor. We all -- that's general concept.

18 MR. SHAW: Right.

19 THE COURT: So then does the assignee have the right  
20 to seek injunctive relief as well as to get damages?

21 MR. SHAW: I think they have the right to seek it,  
22 whether they're entitled to it is a different question, but I  
23 think for purposes of trying to determine --

24 THE COURT: You mean entitled because they don't have  
25 standing or entitled because there may not be facts which



1 satisfy the requirements for an injunction?

2 MR. SHAW: The latter. I think that the covered  
3 persons have assigned over all of their rights under Daniel's  
4 Law to Atlas, injunctive and monetary. It may be that the  
5 benefits -- if Atlas is able to actually obtain an injunction,  
6 meets all the equitable requirements that a court would require,  
7 it may be that benefits flow back to the assignor, just like  
8 some portion of money flows back to an assignor in some  
9 way.

10 But the causes of action, the claims, whatever rights  
11 they have under Daniel's Law have been assigned.

12 THE COURT: So what happens in a situation where Atlas  
13 obtains a thousand dollars -- let's assume there was a  
14 violation of the statute -- and then -- and the data broker  
15 pays the money and so forth, and then two weeks later continues  
16 to publish the names. Atlas could go in and seek an  
17 injunction on behalf of the covered persons, is that what  
18 you're saying?

19 MR. SHAW: That's an interesting hypothetical. I  
20 don't know whether that would be considered a new claim that  
21 you would need a new assignment for, or whether there's some  
22 connection to the old claim that you could say it's contempt of  
23 some type of -- you know, something that arises out of the  
24 prior judgement.

25 I would think, you know, there may be some

1 circumstances where you would need a new assignment  
2 and some circumstances, if it's related to the old activity,  
3 that Atlas could still bring it, that it's already been  
4 assigned over.

5 But either way, you know, if you're looking at the  
6 totality of the circumstances to try to figure out whether  
7 there was some strategem to destroy jurisdiction, that would  
8 only be one part of it. And even there you could see that  
9 there's some factual questions about it.

10 Atlas doesn't -- we as attorneys here for Atlas do not  
11 represent the covered people, we didn't represent them when  
12 they signed up for Atlas.

13 THE COURT: Didn't represent --

14 MR. SHAW: We don't represent the assignors, the  
15 covered people who assigned their claims. We're not the same  
16 lawyers for them.

17 THE COURT: Right.

18 MR. SHAW: They're all these, you know, policemen and  
19 others out there who assign their claims. We don't represent  
20 them and we didn't represent them. Again, Atlas controls the  
21 litigation.

22 Another issue that Your Honor touched on is, you know,  
23 is there some relationship between these parties that  
24 pre-existed these claims, and we would say yes. Covered people  
25 sign up to use Atlas at some point in time when they're

1 interested in doing so. They get the full services that Atlas  
2 provides, which is kind of educational; other services that are  
3 separate from Daniel's Law in kind of investigating places  
4 where their information might be. There's services that  
5 Atlas provides to these people. They have a relationship for  
6 that.

7           One part of that relationship, which occurs after they  
8 sign up for service, is they may choose to send notices for  
9 takedown notices for Daniel's Law. If they do, then there has  
10 to be a time -- notices get sent out, as we've talked about in  
11 other context, and then some time later after the ten days goes  
12 by, it may be, if the facts are there to support it, that Atlas  
13 then sets up the assignment. And then only after that can a  
14 claim be brought if one is going to be brought in court.

15           So there's a relationship between these parties  
16 separate from the claim that's being brought in court, and that  
17 kind of makes it similar, I think, to -- more similar to  
18 something like *Long John Silver's* case with the roofs and the  
19 franchisor than it does to *Grassi* or one of these other cases  
20 that they cite where the only connection between the parties is  
21 to show up to collect on their debt. That's the only reason  
22 for those assignments in some of these other cases that make  
23 them somewhat suspect. That's not what's happening here.  
24 There's a much broader relationship.

25           And then, you know, they also raise an issue about

1 whether there's compensation paid for the assignment itself,  
2 and I think that's too simplistic of a view of the relationship  
3 between these parties.

4 Atlas is providing this service, as I mentioned,  
5 educational and some other kind of investigatory and some other  
6 services to these people, in addition to the Daniel's Law  
7 service, and then they're getting paid -- they're providing  
8 that service to these covered people.

9 That's Atlas's spending money, set up a whole kind of  
10 business around this. They're engaging in a legitimate  
11 business that costs them a lot of money. That's the  
12 consideration that they're providing to other officers writ  
13 large. They don't have a fee schedule that kind of breaks  
14 out --

15 THE COURT: Do they have a right to collect their  
16 counsel fees from the assignors?

17 MR. SHAW: That's also a little bit contrived.  
18 Ultimately if there's money received in the case, then they  
19 will subtract out their attorney's fees on those particular  
20 cases, but they're separately paying lawyers for their own --

21 THE COURT: No. But Daniel's Law, as I understand it,  
22 provides counsel fees for the prevailing attorney; is that  
23 correct?

24 MR. SHAW: It does.

25 THE COURT: So in other words, you collect a thousand

1 dollars liquidated damages from the data broker, you then have  
2 a right to collect your counsel fees from the data broker,  
3 correct?

4 MR. SHAW: Correct.

5 THE COURT: So what is the provision that requires the  
6 covered persons to pay your counsel fee?

7 MR. SHAW: It's part of the assignment and service  
8 agreement between the parties. So it's in addition -- it's  
9 separate from anything that we would get directly from --

10 THE COURT: All right. You win the case, you -- as I  
11 say, you recover the thousand dollars, you give the covered  
12 person 65 percent, so that's \$650 -- right? -- 65 percent of a  
13 thousand dollars.

14 MR. SHAW: Right.

15 THE COURT: You collect your counsel fees.

16 Then you have a right to deduct from that \$650 further  
17 counsel fees?

18 MR. SHAW: Well, I may have to have my counsel kind of  
19 explain the detail for it, but in a broader picture, it's true  
20 that some money will -- we're trying to get all of the money  
21 flowing to the covered people if they recover.

22 THE COURT: Not all of the money, the \$650 -- right?  
23 -- out of a thousand.

24 Because you're going to keep 35 percent, correct?

25 MR. SHAW: Atlas will, correct.

1 THE COURT: I don't mean you personally. Atlas, your  
2 client.

3 MR. SHAW: Yes.

4 THE COURT: And your client is going to collect the  
5 counsel fees if they win, are entitled to it under statute.

6 But now let's assume you lose the case, do you go  
7 after the covered person for the counsel fees you expended in  
8 doing that?

9 MR. SHAW: No. And that's the point. That's exactly  
10 right.

11 THE COURT: Well, what does --

12 MR. SHAW: Atlas eats it. That's why Atlas has  
13 costs --

14 THE COURT: When does the covered person have to pay  
15 counsel fees to Atlas? That's why I'm -- it's been raised by  
16 the other parties, and I'm just interested in understanding it.  
17 It may or may not be relevant to the remand.

18 MR. SHAW: I think only if there's a recovery.

19 THE COURT: Now that it's been raised --

20 MR. PARIKH: Your Honor, may I address that question  
21 directly?

22 THE COURT: Go ahead.

23 MR. PARIKH: The covered people never pay counsel  
24 fees, Judge. It's a misnomer. The idea that the defendants  
25 have raised that the covered person somehow owes counsel fees

1 is just not true.

2 Atlas is fully responsible for the attorney's fees for  
3 prosecuting these actions. Your Honor is correct that Daniel's  
4 Law provides that if a covered person is successful in  
5 establishing a violation, that they're entitled to recover  
6 their counsel fees. So for example, if a covered person's  
7 information was disclosed ten times and there's ten violations  
8 by one data broker, they're entitled to a \$10,000 reward for  
9 that, they would get those fees.

10 THE COURT: Right.

11 MR. PARIKH: If Atlas pursues as an assignee, those  
12 ten claims against the data broker, then Atlas recovers those  
13 counsel fees. If that occurs and Atlas gets the award of  
14 \$10,000, then \$6,500 goes to the covered persons, Atlas gets  
15 \$3,500 and recovers whatever it expended in counsel fees.  
16 There is no additional monetary exchange between the assignor  
17 and Atlas for attorney's fees.

18 And that's why the assignment is complete, Your  
19 Honor. It's a complete assignment because once the entire  
20 claim is assigned, there is no control over the litigation,  
21 there's no expenditure, there's no risk by the covered person  
22 in terms of pushing the litigation forward with regards to  
23 that.

24 THE COURT: But there was some reference to  
25 the --

1 MR. PARIKH: There was, Your Honor.

2 THE COURT: -- language in the service  
3 agreement.

4 MR. PARIKH: And I think what they're referring to,  
5 Your Honor, is that in the service agreement it says that if  
6 there is an award or a settlement, that first off of that is  
7 monies -- so for example, let's say there was a \$1 million  
8 reward and there's \$100,000 in legal fees, but only 50,000  
9 were awarded in the lodestar analysis, that the other 50,000  
10 of attorney's fees may come off the top of that million-dollar  
11 award, and then the remainder of that would then be  
12 split 35 percent and 65 percent pursuant to the terms of  
13 service.

14 So I think what the defendants are arguing is that  
15 there is some monetary amount that could be awarded as part of  
16 a damages award that could go to pay for attorney's fees for  
17 prosecuting these actions.

18 THE COURT: All right. As I said, I'm not sure how  
19 relevant it is to what we're doing here today, but anyhow,  
20 thank you for illuminating the issue.

21 MR. PARIKH: Absolutely.

22 MR. SHAW: And I think each time we have these  
23 hearings, we go through a little bit of the -- you know, how it  
24 actually works, so we all learn a little bit more of it.

25 THE COURT: Right.



1 MR. SHAW: But I guess the last point I would make is  
2 if, in fact, you disregard Atlas's citizenship and you look to  
3 the citizenship of all of the officers, which I believe is what  
4 they're suggesting should happen here, it turns out that  
5 there's three officers at least who are citizens of Delaware,  
6 have citizenship in Delaware.

7 THE COURT: Where is that in the record?

8 MR. SHAW: That is not in the record yet, Your Honor.  
9 As we've been exchanging these lists, we've been kind of  
10 looking through them much more carefully. And if it's  
11 something that we could submit to the Court, we would like to  
12 do that.

13 THE COURT: You mean three of the assignors you're  
14 talking about?

15 MR. SHAW: Assignors, exactly.

16 THE COURT: Not the named parties?

17 MR. SHAW: Correct, three of the assignors.

18 THE COURT: Okay.

19 MR. SHAW: And I'm saying, if the exercise that they  
20 want to take the Court through is disregard Atlas because it's  
21 collusive, because the assignments are collusive, therefore,  
22 you need to then look at the citizenship of all of the --

23 THE COURT: The 19,000.

24 MR. SHAW: The 19,000, I guess in the theory that you  
25 would then still need complete diversity amongst the 19,000 and

1 the defendant. We don't think that exists because there are at  
2 least three people whose citizenship is Delaware.

3 And if we can submit that declaration to that effect  
4 to the Court, we would like to.

5 THE COURT: All right. Anything further anybody? Mr.  
6 Stio?

7 MR. PARIKH: If I could just add one more thing, Your  
8 Honor?

9 THE COURT: Sure, you can go, and then Mr. Stio.

10 MR. PARIKH: Thank you, Judge. Rajiv Parikh for the  
11 plaintiffs.

12 Judge, on the injunctive relief component that you  
13 asked some questions of Mr. Shaw that was raised.

14 THE COURT: Right.

15 MR. PARIKH: So as Your Honor knows, Daniel's Law  
16 provides for several categories of damages, and one of those is  
17 equitable relief or other relief that the Court deems  
18 appropriate. And Your Honor is correct that within the  
19 complaint Atlas and the individual plaintiffs have sought  
20 injunctive relief in addition to monetary damages.

21 The concept there, Judge, is that Atlas is providing a  
22 service, providing multiple services to these covered persons.  
23 That includes some covered people who never actually transmit  
24 Daniel's Law requests. Right?

25 So there are a multitude of services that are

1 being provided. But for those who have submitted these  
2 non-disclosure requests to the defendants and where the  
3 defendants have failed to do that, Atlas's role is to  
4 effectuate, essentially, the service that it's providing.

5 And so the injunctive relief that's being requested is  
6 on behalf of Atlas. Now, it has the benefit of providing the  
7 covered person with what they've ultimately sought from the  
8 outset, which is to enforce their privacy and safety rights  
9 under Daniel's Law, but it's Atlas that's requesting that  
10 injunctive relief in order to effectuate the services that it's  
11 providing pursuant to the terms of service, as well as pursuant  
12 to the assignment that it's received against those individual  
13 entities.

14 THE COURT: But it's one thing to collect  
15 damages because Atlas is going to have some money in its  
16 treasury, so to speak. What about the injunctive relief aspect  
17 of it?

18 Because Atlas would be suing the data broker to  
19 prevent them from disclosing the home addresses and unlisted  
20 phone numbers of covered persons. Now, they clearly have an  
21 interest in obtaining money.

22 Is the interest the same with respect to injunctive  
23 relief in preventing the disclosure of the home addresses and  
24 phone numbers?

25 MR. PARIKH: It is, Judge, because that's one of the

1 main purposes that Atlas exists. It exists to effectuate these  
2 privacy rights and to allow people to effectuate them in a very  
3 unique way.

4 THE COURT: So you're saying because of the  
5 assignment, they stand in the shoes of the assignor for all  
6 purposes, including injunctive relief, and that they would have  
7 standing not only to obtain damages but also to obtain  
8 injunctive relief, even though it's not Atlas's name per se  
9 that is being disclosed?

10 MR. PARIKH: That's right, Judge.

11 THE COURT: Or address or phone number of Atlas?

12 MR. PARIKH: That's right, Judge. And that's  
13 the -- you know, the notion behind this assignment provision.  
14 Right?

15 If an individual police officer or 19,000 of them had  
16 to file small claims actions in New Jersey Superior Court in  
17 order to have their names removed from the 75 or, in this case,  
18 the 35 remand defendants' websites, then that individual person  
19 would be, you know, going and filing each of those individual  
20 lawsuits over and over and over again, which is essentially  
21 impractical.

22 The idea of the assignment -- and Your Honor hit the  
23 nail on the head before. You could have a police department or  
24 a group of police officers that combine together assign the  
25 rights to one of them who now has to be the public face of a

1 lawsuit where what they're ultimately trying to do is have  
2 their information removed from the public sphere for their own  
3 protection and safety and privacy.

4 THE COURT: And the Daniel's Law does permit  
5 assignments, it doesn't limit it -- it's a full assignment?

6 MR. PARIKH: It is, Your Honor.

7 THE COURT: In other words, whatever bundle of rights  
8 belongs to the covered person are assigned to Atlas?

9 MR. PARIKH: That is correct, Judge. That's right.  
10 Or any other person that would be assigned --

11 THE COURT: Or any assignee?

12 MR. PARIKH: Correct. That's right.

13 The last point, Judge, just with respect to Thomson  
14 Reuters. So we didn't -- I don't believe we had an opportunity  
15 to engage in discovery with those two defendants on the  
16 fraudulent joinder issue. I know there were multiple  
17 conferences here about subject matter jurisdiction discovery,  
18 but it really was discovery from the defendants to the  
19 plaintiffs.

20 THE COURT: Well, there was -- I have to look up my  
21 order, but I did permit discovery. That's why the remand  
22 motions have been -- we're dealing with them after the  
23 constitutional issue.

24 MR. PARIKH: I understand.

25 THE COURT: Obviously, the remand comes first. If I

1 don't have jurisdiction, then that's the end of it.

2 MR. PARIKH: Correct, Judge. And all I wanted to  
3 say for the record, because I believe counsel said, you know,  
4 they didn't seek discovery, we did ask Thomson Reuters.  
5 We said, all right, well, tell us who the right defendants are.  
6 If you believe we have the wrong defendants, tell us who the  
7 entities are that when you look at your privacy policy that  
8 you post online and your global website that you have,  
9 which defendants are the ones that are the appropriate  
10 defendants for this lawsuit, and they wouldn't provide that  
11 information.

12 THE COURT: Well, they have not challenged the other  
13 defendants. In other words, the entire case wouldn't be  
14 dismissed. It's only in one case one defendant and in the  
15 other case two defendants, and there are other defendants  
16 that are not being challenged on the ground of fraudulent  
17 joinder.

18 MR. PARIKH: That's right, Judge. And Thomson Reuters  
19 in particular says that none of the defendants that you've  
20 named in this lawsuit are the proper parties. And so we said,  
21 okay, well, let us know who discloses the data and information,  
22 who holds it?

23 THE COURT: Yes, but they haven't raised fraudulent  
24 joinder with respect to all defendants.

25 MR. PARIKH: Only with two of them, Judge, the two

1 that are based in Delaware.

2 THE COURT: Right. Exactly.

3 MR. PARIKH: So I just wanted to point that out for  
4 the record, Your Honor.

5 THE COURT: Thank you. Mr. Stio?

6 MR. STIO: Thank you, Your Honor. I'll be really  
7 quick.

8 Your Honor, the first thing I want to point out is --  
9 and you hit the nail on the head -- these assignments aren't  
10 complete and absolute because of the injunctive relief, and  
11 I'll tell you why.

12 Your Honor, you pointed out --

13 THE COURT: Does it say that they are?

14 MR. STIO: Well, I'm going to tell you why they're  
15 not. You pointed it out. Atlas says, I get injunctive relief  
16 with regard to everything related to the non-disclosure  
17 request.

18 THE COURT: Yeah.

19 MR. STIO: They -- and I don't believe they're in  
20 any way entitled to it, but they get an order for injunctive  
21 relief that benefits all of the class members. A week later,  
22 as you said, there's someone who sees their information  
23 online against one of the defendants against who injunctive  
24 relief is.

25 Mr. Shaw said, well, that person may be able to give

1 another assignment confirmation and we can bring suit. I think  
2 that it shows that it's not complete because, A, Atlas,  
3 purported complete assignee, can bring the claim or application  
4 to enforce that injunction against the defendant. The  
5 individual who receives all of that relief could bring their  
6 own separate action against that same defendant, and the case  
7 never ends. So it's not complete --

8 THE COURT: Well --

9 MR. STIO: -- as to the injunctive relief.

10 THE COURT: Wouldn't that also be true as to  
11 damages? Let's assume Atlas settles and then -- it's an  
12 interesting question under Daniel's Law. Let's assume Atlas  
13 collects a thousand dollars and then three weeks later nothing  
14 has been removed.

15 Is it a -- does Atlas have the obligation to go after  
16 them again or does the covered person have to file a new  
17 assignment? Is it a new cause of action or is it a continuing  
18 violation?

19 I mean, these are all very interesting --

20 MR. STIO: And that's precisely why Atlas is not the  
21 real party in interest. And I'm going to give you one more.  
22 And it's not a hypothetical, it's actually in this case.

23 Mr. Shaw said the covered people brought a class  
24 action against LexisNexis, but that class action arises out of  
25 the non-disclosure requests that were sent by Atlas that



1 purportedly were assignment confirmations. If it was a  
2 complete assignment, the case should be dismissed against  
3 LexisNexis. It's not. It's not a complete assignment because  
4 not only of the substantial interest, not only because of a  
5 lack of consideration, not only because no prior interest. The  
6 case never ends the way this is structured. So the assignment  
7 is not complete.

8           The second point I'd like to make to Your Honor is  
9 with regard to *Sprint*. And, Your Honor, I do think that it  
10 would be a mistake of law to apply *Sprint* in a diversity  
11 jurisdiction context.

12           And I say that because there is language in *Sprint*  
13 where the Supreme Court gives two examples of situations that  
14 if it were before this Court, I think the Court would say under  
15 *Attorneys Trust* and *Grassi* factors, yeah, that's an improper  
16 assignment. Why --

17           THE COURT: You mentioned *Sprint*.

18           MR. STIO: Yeah.

19           THE COURT: And I know that the Supreme Court,  
20 Justice Breyer goes through the history of it, assignments  
21 and so forth. And he cites a number of old Supreme Court  
22 cases.

23           Were any of those diversity cases?

24           MR. STIO: There's no mention of 1332 in the  
25 opinion.

1 THE COURT: No, I'm not talking about the mention of  
2 1332(e). They do cite a number of old decisions, which I'll  
3 have to look at, which Justice Breyer says are consistent with  
4 the decision in *Sprint*.

5 My question is, were any of those diversity cases that  
6 went to the Supreme Court, as opposed to federal question  
7 cases?

8 MR. STIO: I don't know the answer to that. I don't  
9 know the answer.

10 THE COURT: I know *Sprint* was not a diversity case, I  
11 agree with that.

12 MR. STIO: Yeah. But here's --

13 THE COURT: I mean, that would be illuminating to see  
14 if any of those was a --

15 MR. STIO: And, Your Honor, I'm happy to do that and  
16 send a letter.

17 THE COURT: We can do that too.

18 MR. STIO: But one of the things I want to point the  
19 Court's attention to is on page 2544, the court talks about  
20 two --

21 THE COURT: What case are you talking about?

22 MR. STIO: This is *Sprint*, the *Sprint* opinion. The  
23 court talks about two instances where they believe that  
24 standing would still exist.

25 One is, for example, the agreement could be rewritten

1 to give the aggregator a tiny portion of the assigned claim  
2 itself, perhaps only a dollar or two. That would be a partial  
3 assignment. The court seems to say standing exists. And I  
4 would submit to this Court that in that situation where there's  
5 a dollar of a thousand-dollar recovery and all of the other  
6 factors are present, which we believe they are, diversity can  
7 be ignored as to Atlas.

8           The second example that they give is, or the payphone  
9 operators might assign all other claim to a trust and then they  
10 pay a trustee, perhaps the same aggregator, to bring suit on  
11 behalf of the trust.

12           I would submit to the Court that if they gave it to a  
13 trustee who was a Delaware corporation that was intended to  
14 prevent someone from getting into court, that would be a  
15 situation where you can disregard diversity of citizenship but  
16 yet there's still standing.

17           And that second analysis goes to the McCassin(Sic)  
18 case that Your Honor discussed, getting a trustee in another  
19 state who is not a real party in interest.

20           Second point I want to make, Your Honor, is *Long John*  
21 *Silver's* did not involve injunctive relief.

22           THE COURT: I didn't think it would.

23           MR. STIO: If you look at page 755 of the opinion. I  
24 mean, and if you think about it, right, you have all these  
25 franchisees who have roof damage, are they going to wait three

1 years to get the roof fixed?

2 THE COURT: The last person they're going to go after  
3 is the fellow who didn't correctly do the repairs.

4 (Laughter.)

5 MR. STIO: Right.

6 On attorney's fees, Your Honor, the attorney's fees,  
7 the net amount of 65 percent comes out of the individuals. And  
8 I agree, it's an instance where attorney's fees are not awarded  
9 fully or, where I think it would come into play, is if there's  
10 a settlement. If these cases settle and there's not a specific  
11 statement about attorneys fees, it's coming out of the pocket  
12 of the covered people. So to say that the covered people  
13 aren't on the hook here is not entirely accurate.

14 Finally, Your Honor, and I think the Court is aware of  
15 this, Atlas has said at different points the standard here is  
16 clear and convincing. It's not. As to diversity jurisdiction,  
17 the standard is preponderance of the evidence. And I would  
18 direct the Court's attention to *McCann*, Third Circuit case, 458  
19 F.3d 281.

20 And if you have any questions, I'm happy to answer  
21 it.

22 MR. KIMREY: Good afternoon Judge. Blaine Kimrey,  
23 Whitepages and Hiya. Just a few things quickly.

24 Again, *Sprint* is not precedent for this case on  
25 1332(a). 1332 isn't mentioned at all in that case. It is a

1 standing case. It is not a case addressing whether an entity  
2 is a real party in interest for purposes of diversity  
3 jurisdiction.

4 THE COURT: Well, those concepts are really  
5 interchangeable, aren't they, to a large extent --

6 MR. KIMREY: No.

7 THE COURT: -- real party in interest and standing?

8 MR. KIMREY: No.

9 THE COURT: All right. Tell me why.

10 MR. KIMREY: Standing has to do with injury in fact  
11 under Article III and the ability to bring a suit. So we're  
12 not saying --

13 THE COURT: See, there was no injury in fact to the  
14 assignee in *Sprint* if that's the standard.

15 Was there? No.

16 MR. KIMREY: The court found that there was  
17 standing in that case, but that's not dispositive as to the  
18 standard --

19 THE COURT: The standard, refused of the assignor, but  
20 there was no injury in fact to the assignee.

21 So you have to look to the assignor, correct?

22 MR. KIMREY: I'm not saying, Your Honor, that the  
23 Supreme Court got the *Sprint* decision right on Article III  
24 standing.

25 THE COURT: Well, we can debate that for a long time,

1 but I don't have the luxury of deciding whether they were right  
2 or wrong.

3 MR. KIMREY: Well, it just doesn't matter with respect  
4 to diversity jurisdiction, Your Honor. The real party in  
5 interest for purposes of diversity jurisdiction and standing as  
6 in Article III standing are distinct intellectual concepts.  
7 And I think that you picked up on this, Your Honor, in asking  
8 whether any of the cases that were cited in *Sprint* were  
9 diversity cases, because *Sprint* is a federal question case, and  
10 I definitely think that we would like additional briefing on  
11 that.

12 THE COURT: I don't think you need to do that. We  
13 can look those up and determine whether -- I mean, many of  
14 them were very old cases. And as I say, I don't know the  
15 answer, but many of the cases that -- there weren't a lot of  
16 federal questions decades and decades ago, so -- but we'll  
17 see. I don't know whether they were federal questions or  
18 not.

19 MR. CHEIFETZ: I do know the answer and I'm happy to  
20 address that after Mr. Kimrey addresses that.

21 THE COURT: We'll get the answer. Great.

22 MR. KIMREY: So I know that this Court, like any  
23 district court, any circuit court is looking for binding  
24 precedent that would guide this Court at the Supreme Court.

25 THE COURT: Right.

1 MR. KIMREY: On this question, diversity jurisdiction  
2 under 1332(a), there is no binding precedent before the Supreme  
3 Court and it's a stretch to apply *Sprint* here.

4 There is circuit level authority. There's the  
5 *Attorneys Trust* case, there's the *Grassi* case, there's also the  
6 LNY case, which is at 2023 WL 662167. That's a Fifth Circuit  
7 case, 2023 WL 662167, from 2023.

8 Coming here today, I was curious what the most recent  
9 circuit court reliance on *Grassi* and *Attorneys Trust* was and  
10 whether it was material to the Court. And this case is, in  
11 fact, material and it's from 2023. And what it says is -- it  
12 finds that the assignee's citizenship should be disregarded  
13 because the assignment was invalid -- or no, no. I am sorry.  
14 That's not correct. Because the assignee had conceded that --  
15 that the assignee was a nominal party. Okay. And I know Atlas  
16 hasn't done that here.

17 THE COURT: No, right.

18 MR. KIMREY: But it relies on *Grassi* and it doesn't  
19 cite the *Sprint* decision, as far as I'm aware. I have to look  
20 at that, but I'm pretty sure it doesn't cite *Sprint*.

21 So you have two Fifth Circuit decisions, *Grassi* and  
22 LNY, and you have the Ninth Circuit decision that support this  
23 notion that Atlas's citizenship can be disregarded and that  
24 motive, while a potential factor for consideration, is not a  
25 dispositive factor. Right?

1           And this -- so again, I agree with Mr. Stio, reliance  
2 on *Sprint* here would be a mistake of law. I also think that  
3 the two-step process that you've articulated, Your Honor, is  
4 not actually the test. It's not a two-step process. You don't  
5 look at real party in interest and then collusion.

6           It's a real party in interest test overall that  
7 includes within it this notion of consideration of motive, as  
8 set forth in the *Attorneys Trust* case and the *Grassi* case. So  
9 to say that there's a two-step process also would be a mistake  
10 of law. I obviously don't know what you're going to do so --

11           THE COURT: Neither do I.

12           (Laughter.)

13           MR. KIMREY: Especially today. But I just -- I would  
14 like to make a request, Your Honor, that if the Court is  
15 inclined to side with Atlas as to the 1332(a) argument, which  
16 the Court should not do, but if the Court is, the Court should  
17 put the magic language in the order under 28 U.S.C. 1292  
18 exercising its discretion on what we've identified as two  
19 potential mistakes of law for consideration by the Third  
20 Circuit. And --

21           THE COURT: Well, you do have the right to go to the  
22 Court of Appeals on the 1332(d).

23           MR. KIMREY: Yes.

24           THE COURT: They don't have to take it, I think it's  
25 discretionary.



1 MR. KIMREY: That's right.

2 THE COURT: But not under 1332(a).

3 MR. KIMREY: Right. Under 1443, the certification  
4 request would just go to the appellate court for CAFA, either  
5 mass action or class action, but for the simple *Strawbridge vs.*  
6 *Curtiss* diversity --

7 THE COURT: That would be 1292 --

8 MR. KIMREY: That would be a 1292. And the Third  
9 Circuit takes a very liberal view of the Court's discretion in  
10 that regard, and that's at 940 --

11 THE COURT: A liberal view of what?

12 MR. KIMREY: You have -- in the Third Circuit,  
13 district court judges have much more discretion under 1292 as  
14 to certifying remand decisions.

15 THE COURT: They have the final word on that.

16 MR. KIMREY: Yeah. They still have to approve it as  
17 well.

18 THE COURT: Yeah.

19 MR. KIMREY: That's right. So it's a two-step process  
20 for 1332(a), base, remand, certification --

21 THE COURT: I've already said that on the  
22 constitutional issue if anybody wants a 1292(b), I certainly --  
23 if I decide --

24 MR. KIMREY: That's right.

25 THE COURT: -- in a way that's not -- that says the

1 statute is valid, then I'll permit you to take it to the Court  
2 of Appeals. Otherwise, you would have to wait until the end of  
3 the case.

4 MR. KIMREY: Right. So I think it would be  
5 appropriate for the Court to take the same approach with  
6 respect to the jurisdictional issue.

7 Finally, these three alleged Delaware assignors that  
8 we just heard about today for the first time, the Court should  
9 disregard that because it's not part of the briefing. The  
10 citizenship of these people --

11 THE COURT: It's a little late for that.

12 MR. KIMREY: Right. And also they're not parties  
13 anyway. So disregarding Atlas's citizenship for purposes of  
14 diversity doesn't automatically make those people parties in  
15 the caption of the complaint, so they're not relevant for  
16 purposes of diversity jurisdiction.

17 THE COURT: All right.

18 MR. KIMREY: That's it, Your Honor. Thank you.

19 THE COURT: Anyone else? It's getting late, but  
20 I'll -- somebody's got to have the last word.

21 MR. CHEIFETZ: Thank you, Your Honor.

22 David Cheifetz. I appreciate the time. I know it's  
23 getting late.

24 On *Sprint*, because the Court asked, I would like to  
25 answer that question. One of the old cases that *Sprint* cites

1 is the *Waite* case that I referred to earlier, that's W-A-I-T-E,  
2 and that was a diversity case. And the court in *Sprint*  
3 referred to that case and said that, in a unanimous decision  
4 there, the *Waite* court ultimately held that federal courts  
5 could not hear that suit because the amount of controversy  
6 requirement of diversity jurisdiction would not have been  
7 satisfied if the bondholders had sued individually. The  
8 assignors got sued individually.

9 That's the principle I referred to earlier and why  
10 *Sprint* is very important to the mass action argument, because  
11 *Sprint* cites *Waite*, and *Waite* recognizes the principle that a  
12 mass assignee should be as akin to multiple plaintiffs.

13 And that's why it ties back to *Hood*. Because they say  
14 that -- in part three of *Hood*, *Hood* -- the Supreme Court in  
15 *Hood* rejected this background inquiry and that that wasn't a  
16 background principle Congress could have known about or  
17 intended.

18 And, importantly, the Supreme Court in *Hood* said that  
19 it makes sense to infer Congress's intent to incorporate a  
20 background principle into a new statute like CAFA where the  
21 principle has previously been applied in a similar manner. In  
22 *Hood*, the real party in interest inquiry had to do with whether  
23 you disregard someone's citizenship or not. It didn't have to  
24 do with numerosity.

25 And so the court in *Hood* said that's a principle that

1 Congress wouldn't have had to take into account. But in *Waite*,  
2 which is a 125-year-old Supreme Court case, the principle is  
3 that mass assignees are akin to multiple plaintiffs. And that  
4 is a governing principle, therefore, that, according to *Hood*,  
5 it would have made sense for Congress to incorporate when it  
6 passed CAFA.

7 Now, two more quick points. Mr. Shaw, I think, said  
8 that in *Hood* the Supreme Court said that the *parens patriae*  
9 context was not a distinguishing factor in that case. The  
10 Supreme Court didn't say that. In fairness, I've acknowledged  
11 the Supreme Court didn't expressly limit its holding, but it  
12 certainly didn't affirmatively say that the *parens patriae*  
13 context wasn't the distinguishing factor.

14 And finally, on that point -- and I didn't get to  
15 cover this earlier -- the reason that the case is so  
16 distinguishable is not just on the facts. Look at the  
17 reasoning in *Hood*. Look at each of the reasons the Supreme  
18 Court gives in *Hood* to reach its holding, that it would result  
19 in all these administrative difficulties if we looked beyond  
20 the named plaintiffs.

21 On page 170 of *Hood*, the court said: It is difficult  
22 to imagine how the claims of one set of unnamed individuals  
23 could be proposed for joint trial on the ground that some  
24 completely different group of named plaintiffs share common  
25 questions.

1           That concern has no application here whatsoever  
2 because you have one complete set of known people.

3           The second rationale the Supreme Court gave on  
4 page 171: If the term "plaintiffs" is stretched to include all  
5 unnamed individuals with an interest in the suit, then  
6 determining the individual amount in controversy for each  
7 plaintiff becomes an administrative nightmare.

8           Also, completely inapplicable here because in *Hood* the  
9 court would have had to guess which Mississippi citizens were  
10 even involved. It couldn't even identify them to determine the  
11 amount in controversy, and here that's not an issue.

12           THE COURT: Why isn't it here?

13           MR. CHEIFETZ: Because Atlas stands in the shoes of  
14 19,000 known individuals, they've alleged in the complaint, as  
15 we said in our notice of removal, sufficient amount in  
16 controversy. Atlas stands here representing those known  
17 parties.

18           THE COURT: But if they're standing in the shoes, does  
19 it make it a mass action, if you're standing in the shoes of,  
20 as opposed to representing, in effect, similar claimants?

21           MR. CHEIFETZ: That's precisely what makes it a mass  
22 action. Atlas is -- grammatically I'm not sure if that's right  
23 -- Atlas is, in effect, each covered person. They have joined  
24 those claims in a single suit. They stand here as Atlas as  
25 assignee of Mr. John Doe 1, Atlas as assignee of Mr. John Doe

1 2, and on and on 19,000 times.

2 And the third rationale the Supreme Court gives for  
3 why the argument there wasn't acceptable is that under CAFA for  
4 transfer motions: "A majority of plaintiffs in the action must  
5 request transfer."

6 So the Supreme Court said if plaintiffs means all of  
7 these unknown Mississippi citizens, who we don't even know  
8 exists, it would be surpassingly difficult for a court to  
9 decide whether to transfer a case because we don't know who  
10 consents or who wants transfer.

11 That's completely not applicable here because of the  
12 reason Your Honor identified. Atlas stands in the shoes of all  
13 the covered persons, can speak for it with respect to any  
14 decisions or information necessary to be provided to the Court,  
15 including some hypothetical transfer motion.

16 So again, for all of those reasons, the reasoning in  
17 *Hood* is completely inapplicable here and it wouldn't make sense  
18 to extend it, therefore, to the very different facts of this  
19 case. Thank you.

20 THE COURT: Thank you. Anything else from anyone?  
21 Thank you all for coming.

22 Oh, yes, go ahead.

23 MR. CHRISTIE: I'm sorry, really quickly. Scott  
24 Christie on behalf of Black Night Technologies, 24-4233.

25 Not only are the potential Delaware plaintiffs

1 inapplicable, as Your Honor has noted, but it is not clear at  
2 all that any non-New Jersey covered person, ostensible covered  
3 person, can sue or has standing under Daniel's Law.

4 Because as Your Honor knows, it is limited to relief  
5 for current and former law enforcement in New Jersey and it is  
6 by --

7 THE COURT: Well, you could be a former police officer  
8 in New Jersey and move to Delaware or Pennsylvania.

9 MR. CHRISTIE: But it covers home addresses. Are we  
10 then equating --

11 THE COURT: Oh, you mean their home addresses may be  
12 in Delaware now or -- I see what you're saying.

13 MR. CHRISTIE: Exactly, Judge.

14 So by no means should Your Honor be of the disposition  
15 that any non-New Jersey resident has standing here on top of  
16 the other reasons why you should disregard --

17 THE COURT: All right.

18 MR. KIMREY: -- the Delaware, potential Delaware  
19 plaintiffs.

20 THE COURT: All right.

21 MR. SHAW: Your Honor, just very quickly.

22 THE COURT: I'll give you one minute. Go ahead.

23 MR. SHAW: Adam Shaw for the plaintiffs. It's a  
24 retired person who lives in Delaware. And I just wanted to say  
25 the Lexis case is not a Daniel's Law case, it's a -- it's not a

1 class action based on Daniel's Law, it's a class action based  
2 on a different statute.

3 MR. PARIKH: Judge, can I just raise one housekeeping  
4 issue?

5 THE COURT: Yes.

6 MR. PARIKH: Pursuant to local Civil Rule 5.3, we're  
7 required to file a motion to seal with respect to the remand  
8 briefing by this Wednesday. I think we've conferred with  
9 defense counsel, if the Court would permit us one extra week to  
10 file that motion --

11 THE COURT: What is so secret that we have to  
12 seal --

13 MR. PARIKH: There's some proprietary issues, Judge,  
14 and then there's safety issues. I, for one, on my personal  
15 cell phone last week got a threatening phone call from the  
16 principal of one of the defendant companies. I raised it with  
17 that lawyer. There are also those similar types of harassments  
18 and threats that are being made against Atlas employees.

19 And so in terms of sealing from the public docket some  
20 of the portions of the deposition transcript where people's  
21 names or information or where they live is to be sealed, and  
22 then also just some proprietary issues with respect to Atlas's  
23 cyber security efforts and then some of its service terms that  
24 are non-public information.

25 THE COURT: You're not seeking to seal the argument



1 here today, are you?

2 MR. PARIKH: No, Your Honor, just parts of the  
3 exhibits to the briefing that contain deposition transcripts.

4 THE COURT: And they're not under seal at the  
5 moment?

6 MR. PARIKH: They are under seal, but we're required  
7 under the local rule to file a motion to make them sealed  
8 permanently.

9 THE COURT: All right. File whatever you need to  
10 file.

11 MR. PARIKH: Thank you, Judge.

12 THE COURT: Thank you very much.

13 (Matter adjourned at 12:58 p.m.)

14 - - - - -

15  
16 I certify that the foregoing is a correct transcript  
17 from the record of proceedings in the above-entitled matter.

18  
19 /S/ Sharon Ricci, RMR, CRR  
20 Official Court Reporter

21 October 22, 2024  
22 Date

23

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